United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

JOINT APPENDIX

[redacted] 774

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 19,284

AYAKO HONDA, ET AL., *Appellants,*

v.

NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL OF THE UNITED STATES, *Appellee*

No. 19,282

MASAE KONDO, ET AL., *Appellants*

v.

NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL OF THE UNITED STATES, *Appellee*

No. 19,283

MASARU OKAMOTO, ET AL., *Appellants,*

v.

NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL OF THE UNITED STATES, *Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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AYAKO HONDA

No. 19,284

Filed May 19, 1964

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1179-64

AYAKO HONDA, 1576 Valota Road, Redwood City, California; KANEKICHI MURAKAMI, 450 North 12th West, Salt Lake City, Utah; KANEYO SATO, P. O. Box 242, Ontario, Oregon; TOMI TSUJI, 6828 Beacon Avenue, Seattle 8, Washington; GENSUKE YOSHIDA, 247 W. 72 Street, New York, New York 10023, for themselves and on behalf of all others similarly situated, *Plaintiffs*,

v.

ROBERT F. KENNEDY, Attorney General of the United States, Department of Justice Building, Washington 25, D.C., *Defendant*.

COMPLAINT FOR DECLARATORY AND OTHER RELIEF

1. This Court has jurisdiction under 5 U.S.C. 1009, 28 U.S.C. 1331, 1357, and 2201, and 50 USC Appx. 34f, as amended.

2. Plaintiffs are former depositors in the Yokohama Specie Bank, Ltd., who had assets on deposit in said bank on December 7, 1941. They then held identically-worded yen Certificates of Deposit issued to them in the United States in exchange for the deposit of dollars in said bank, which Certificates were redeemable upon demand in dollars at the offices of the bank in the United States or in yen at the offices of the bank in Japan.

3. Plaintiffs file this action on their own behalf and on behalf of all others similarly situated. The persons so situated, several thousand in number, are so numerous as to make it impracticable to bring them all before the Court, and each of them has an identical claim against the funds

of said bank seized by the United States Government, based upon identical yen deposit certificates, differing only as to date, amount, name of depositor and amount of interest. Hereinafter, unless otherwise stated, the term plaintiffs will be used to describe the entire class on whose behalf this suit is filed.

4. Defendant, Robert F. Kennedy, is the Attorney General of the United States. He is a successor in office to the Alien Property Custodian who on December 7, 1941 seized, and in 1943, pursuant to the Trading with the Enemy Act as amended (50 USC Appx. 34, 620), vested certain properties of the Yokohama Specie Bank, Ltd., including the funds plaintiffs had on deposit therewith. Unless otherwise stated, the term defendant will be used hereinafter to refer to the named defendant and/or his predecessors in office or the Office of Alien Property, as the context may require.

5. Pursuant to the Trading with the Enemy Act, plaintiffs submitted timely debt claims to defendant on account of the seizure of their assets as aforesaid.

6. Defendant thereafter recognized the validity of plaintiffs' claims by written communications in 1958 and 1959. A letter typical of that sent to each of the plaintiffs is attached hereto as Exhibit "A" and by this reference made a part hereof. Defendant, however, proposed to pay at the ratio of 361.55 yen per dollar, rather than return to plaintiffs their money which defendant had seized at the ratio of approximately 4 yen per dollar (23.4 cents per yen), which was the true and accurate ratio of dollars to yen and the appropriate ratio for measuring the dollar value of plaintiffs' holdings and just claims under said Act.

7. Plaintiffs did not, in 1958 and 1959, submit for payment in the proposed reduced amounts, their original certificates, as they were invited to do by the letters of defendant (see Exhibit A), bcause (a) the proposed amount of payment was legally erroneous, inadequate and arbitrary (representing but 1.18 per cent of their true claim), as hereinabove set forth in paragraph 6; because (b) they were unwilling to surrender at that time their original certificates constituting the physical evidence of their right and claim; because (c) they feared that submission of their

original certificates for payment of the proposed legally erroneous amount would constitute acquiescence in the adequacy and legality thereof, and because (d) many of the plaintiffs were and are old people who could not read English and did not understand the communications of the defendant.

8. The Office of Alien Property had, and has, photostatic copies of each of plaintiffs' Certificates. Such photostatic copies of each of plaintiffs' Certificates were required by said Office as a condition of the timely filing and consideration of the claims of all claimants; the Office of Alien Property at all times had, and has, access to or possession of the books of the Yokohama Specie Bank, Ltd. which showed and show who were and are the holders of the Deposit Certificates, the numbers and amounts thereof; and the said Certificates were and are non-negotiable. It was not necessary, therefore, as a condition of the allowance of the plaintiffs' claims, as distinguished from the payment thereof, that the Office of Alien Property have in hand the original Certificates.

9. Subsequently the defendant dismissed each of the plaintiffs' debt claims for failure to file original Certificates, as requested in the communications from defendant to plaintiffs, an example of which is attached hereto as Exhibit A.

10. Pursuant to Section 34f of the Trading with the Enemy Act as amended (50 USC appx. 34f), on May 11, 1961, defendant published a schedule of claims proposed to be paid from assets of the Yokohama Specie Bank, Ltd., none of which included plaintiffs' claims. Thereafter, beginning about August 1, 1961, he began to mail said schedules to the various debt claimants. On August 13, 1961, a class suit on behalf of persons thus scheduled for payments was filed in this Court in the case of *Abe* v. *Kennedy*, Civil Action Number 2529-61, to test the adequacy of the proposed yen-dollar ratio under said schedule, which constituted the same issue then existing between plaintiffs herein and defendant. Plaintiffs were not included among the class on whose behalf said suit was filed.

11. On or about April 27, 1964 the *Abe* suit was settled

by an order of this Court awarding payment to the plaintiffs therein of the principal of their claims at a ratio of approximately 23 cents per yen. Said settlement did not exhaust the amount of money held by defendant and defendant still holds funds in sufficient amount to pay plaintiffs on the same basis as said settlement. On information and belief, plaintiffs allege that the present administrative policy of defendant is to pay all valid claims based upon seizure of the assets in the Yokohama Specie Bank, Ltd., in the ratio of approximately 23 cents per yen.

12. Plaintiffs, as set forth above in paragraph 6, have proved to the satisfaction of the defendant that they hold valid debt claims on account of the seizure of their assets in the Yokohama Specie Bank, Ltd. Plaintiffs allege on information and belief, that nevertheless defendant declines to pay the just debt claims of plaintiffs solely because original certificates were not by them submitted to defendant in 1958 and 1959, as above set forth in paragraph 7.

13. The requirement imposed by defendant for the submission of original certificates as a prerequisite to award of the proposed legally inadequate and erroneous amount, was arbitrary and unauthorized. Defendant now recognizes by virtue of the conversion rate by him employed, as set forth in paragraph 11 above, the error of his previously proposed conversion ratio. Refusal now to pay plaintiffs' valid debt claims solely for their failure to comply with the defendant's previous arbitrary and unauthorized demand for original certificates, as aforesaid, is injurious, inequitable, contrary to the statutory rights of plaintiffs and deprives them of property without due process of law.

14. Plaintiffs were and are ready, willing and able to surrender their original Certificates as a condition of receiving award or payment of their claims on the conversion formula set forth in paragraph 11 above, at such time as requested, noticed or ordered to do so by the defendant or by this Court.

WHEREFORE, plaintiffs pray that the Court declare their rights herein, specifically their right not to have their debt claims rejected on account of the unlawful requirement earlier imposed for submission of original certificates; that

they be paid in the same conversion ratio as plaintiffs in *Abe* v. *Kennedy*, No. 2529-61, and for other appropriate relief.

JOSEPH L. RAUH, JR.,
JOHN SILARD,
1625 K Street, N.W.,
Washington 6, D.C.

A. L. WIRIN,
FRED OKRAND,
257 South Spring Street,
Los Angeles 12, California.

MARSHALL ROSS,
139 South Beverly Drive,
Beverly Hills, California,
Attorneys for Plaintiffs.

EXHIBIT A

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Ayako Honda
1576 Valota Road
Redwood City, California

Dear Sir:

Reference is made to the above-numbered debt claim which has been filed with this Office with respect to the insolvent account of the Yokohama Specie Bank, Ltd. The claim is based upon yen certificates of deposit.

The Director of this Office decided on November 13, 1957, *In the Matter of Kunio Abe, et al.*, Claim No. 55507, Docket No. 55 D 72, which decision the Attorney General has declined to review, that yen certificates of deposit issued by the Yokohama Specie Bank, Ltd., and the Sumitomo Bank, Ltd. are obligations payable in yen in Japan, and that claims based on such certificates of deposit are to be allowed and paid in United States currency at the post war rate of exchange in accordance with the "Judgment Day" rule set forth in *Deutsche Bank* v. *Humphrey*, 272 U.S. 517 (1926). Thus, the current rate of exchange of 361.55 yen to one dollar must be used in converting the yen into a dollar amount. Interest is allowable from the date of deposit to the date of payment.

Therefore, if you submit your original certificates of deposit to this Office, I can recommend your claim for allowance in the sum of $9.09 plus interest. If you have lost your certificates, you should prepare a statement setting out that the deposits were made as alleged in the Notice of Claim form, giving the numbers of the certificates, the dates of the deposits, and the branch of the Bank at which the certificates were purchased. You should also state that you have not received payment from the Bank or accepted renewed certificates of deposit. This statement should be signed and sworn to by you before a Notary Public and forwarded to this Office in support of your claim.

Payment of your claim, however, will not be made immediately. Under the procedures set forth in section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f)), it is necessary that all of the approximately 9000 claims filed against the Yokohama Specie Bank, Ltd. be reviewed and a schedule issued showing the proposed payments before any payments can be made. Within sixty days after the issuance of the schedule, any aggrieved claimant may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Attorney General as defendant. If no complaint for review is filed, payments will be made in accordance with the schedule.

Advice received by this Office is to the effect that yen certificate of deposit accounts are carried on the books of the Yokohama Specie Bank, Ltd. in Japan, and the funds may be withdrawn in that country or transferred to the Bank of Tokyo, Ltd. Under the circumstances, you may with to utilize the funds in Japan rather than await settlement by this Office. If this is done, the Notice of Claim filed with this Office should be canceled by signing and mailing the enclosed Notice of Cancellation of Claim card.

If, however, you wish to maintain your claim with this Office you are requested to submit the original certificates of deposit or the notarized statement as to why they cannot be forwarded. In the event you object to the allowance of your claim in the amount stated above, you should submit the certificates to this Office within the next forty-five days and file a statement specifying your objections, together with the reasons in support thereof. Upon receipt of your objections, if I consider them to be without merit, I shall apply to the Director of this Office, pursuant to section 502.25(1) of the Rules of Procedure for Claims, a copy of which is enclosed, for the entry of an Order allowing your claim in the principal amount stated above, plus interest, and dismissing any portion over and above that amount on the ground that there is no debt due and owing to you by the Yokohama Specie Bank, Ltd. in excess of that amount. In acting upon my application, the Director will consider the statement of objections that you may have submitted.

On the other hand, if within the next forty-five days you do not submit the original certificates of deposit or a statement explaining why they cannot be forwarded, I shall conclude that the claim has been abandoned in its entirety and, without further notice to you, shall apply to the Director for the entry of an Order dismissing the claim on the ground of abandonment, pursuant to section 502.25(g) and (i) of the Rules of Procedure for Claims.

To recapitulate:

1. If you wish to maintain your claim with this Office, you should within forty-five days forward the original certificates of deposit and, if you wish to do so, file a statement of your objections to the allowance of the claim in the amount stated above.

2. If you wish to maintain your claim but do not have the original certificates of deposit, you should within forty-five days submit a statement, signed and sworn to before a Notary Public, giving the details of the deposits and stating that you have not received payment or renewed certificates. If you wish to do so, you may also file a statement of your objections to the allowance of the claim in the amount stated.

3. I shall then apply to the Director for an Order allowing your claim in the principal amount stated above, plus interest, and dismissing any portion over and above that amount. Where objections have been filed, they will be submitted to the Director for his consideration in acting upon your claim.

4. If, within forty-five days, you do not submit the original certificates of deposit or an explanation as to why you cannot forward them, I shall conclude that the claim has been abandoned and shall apply to the Director for an Order dismissing the claim on that ground.

5. If you prefer to utilize the funds in Japan, you should sign and mail the enclosed Notice of Cancellation of Claim card in order to clear the records of this Office.

Please note that the original certificates must be submitted; photostatic copies cannot be substituted.

Sincerely yours,

ARTHUR R. SCHOR,
Chief, Claims Section,
Office of Alien Property.

Enclosures

cc: Wirin, Rissman & Okrand,
257 South Spring Street,
Los Angeles 12, California.

Filed January 8, 1965

AFFIDAVIT OF KYUJI HOZAKI

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, KYUJI HOZAKI, being first duly sworn, depose and say:

My wife, Haruyo, and I were both born in Japan, she in 1896, I in 1897. Neither of us can read English. We are both now United States citizens, becoming such as soon as we were able, after the law was changed.

My claim with the Office of Alien Property for the return of the money I deposited with the Yokohama Specie Bank befor- the war is number 47812 and my wife's is number 47680.

While I don't remember the details, I do remember our receiving a letter or letters from the Office of Alien Property, which I believe were read to us, offering to pay us a ridiculous fraction of the amount of money we had deposited and asking us to send in our original certificates. I believed the purpose of the letter was that if we were agreeable to accepting the small amount we should send in the originals, but I did not understand this to be final nor to mean that if we did not accept, we would get nothing. I thought that there would be more proceedings.

I recall we received notices that our claims were dismissed, but, again I believed that a law suit which I had heard was filed in Washington, D.C. was for all yen claimants and would protect us all. I could not believe that in the end the Government would try to keep from us the money we had deposited.

The moneys we had deposited with the Yokohama Specie Bank along with that we deposited in the Sumitomo Bank which, I understand, is completely lost because the Government has paid all the money it seized from that bank, a total of about $2,000.00, represented, save for a deposit of about $400.00 with the Security-First National Bank, all the life savings we had. When we were evacuated I was forced to sell my barber shop for $200.00 which after the

evacuation I bought back for $2,500.00 which I borrowed in order to be able to do. I received about $1,000.00 for my evacuation claim, but am out the difference.

Of my three sons, two served in the United States armed forces during World War II. My son, Toshio, was killed in Italy on April 5, 1945 while serving in the 442nd Regimental Combat Team. My other son, Teruo, also served in Europe. He was in a hospital in Germany when the war stopped. He was then sent back to the United States to a New Mexico Army Hospital and then to a veterans hospital in San Fernando Valley, California. He died of tuberculosis on June 16, 1946.

/s/ KYUJI HOZAKI.

Subscribed and sworn to before me this 19th day of November 1964.

/s/ K. MUKAEDA.
Notary Public in and for said County and State.

Filed January 8, 1965

AFFIDAVIT OF JIRO KAI

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, JIRO KAI, being first duly sworn, depose and say:

I am Japanese and understand English with great difficulty. I was born in Japan in 1883 and came to the United States in 1905. I have four children born in the United States. My two sons have served in the United States Army. James went into the service as a private in 1941 and was an officer when he left in 1946 or 1947. He served in the South Pacific and in Japan. Smiley served in Japan after the war.

I have a small claim (#12847) with the Office of Alien Property for the return of the money (about $20.00) I deposited with the Yokohama Specie Bank before the war, which was seized by the United States Government but has not been returned to me.

When I sent in my claim, I did so myself and with it I sent a picture of my certificate.

I did receive a letter from the Office of Alien Property offering me about 30¢ for my claim. I think I recall being asked to send in my original certificate by registered mail to receive this amount. For me to have done this would have cost more than I was being offered. I had heard from others that many more persons had claims similar to mine and I understood that they were all being processed together. I saw in the Japanese newspaper that a court suit was or would be filed seeking to obtain for the yen claimants the proper amount for their claims. I believed, therefore, I would be protected. With the small amount of my claim, I do not see how I could go to court myself, but at no time did I, nor did I intend to, give up my right to receive my money back.

/s/ JIRO KAI.

Subscribed and sworn to before me this 21st day of Novembe 1964

/s/ K. Mukaeda,
Notary Public in and for said County and State.

Filed January 8, 1965

AFFIDAVIT OF SHIGEO KUMASHIRO

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, SHIGEO KUMASHIRO, being first duly sworn, depose and say:

I was born in Japan in 1903 and came to the United States in 1921. I went about half way through middle (high) school in Japan.

I do not feel confident about being able to read English and so this affidavit is being translated to me before I sign it. Also, my conference with Mr. Okrand, who prepared this affidavit, was with the aid of an interpreter.

Before World War II broke out, I was living with my family in Auburn, Washington, doing truck farming. We are all persons of Japanese ancestry; my wife was born in Japan; all my children—three girls and a boy—were born in the United States. I became a citizen of the United States as soon as I could after the law was changed allowing Japanese aliens to become citizens.

My son, Howard, served with the United States Army in Korea during the early 1950s, was wounded there and awarded the Purple Heart.

Before the war I had left a small amount of money with the Yokohama Specie Bank in Seattle, Washington amounting to almost $60.00. I have filed a claim (#49706) with the Office of Alien Property for the return of this money, but have not received it, I being among those to whom the Government has refused payment on the ground that I did not sent in my original certificate of deposit when asked to do so in 1958 or 1959, although the Government has a photostatic copy of my certificate which I sent along with my claim form or shortly thereafter.

I do recall receiving a letter from the Office of Alien Property. It was very confusing to me. The letter said that the Government recognized my claim as a proper one, but only offered to return to me a few cents, something like 70 or so cents, and that to get this money I was to send in my original certificate. I did not understand that if I did

not send in the certificate I would get nothing and it would cost me almost as much as I was being offered to send the letter by registered mail.

I had understood that there were other and larger claims which had or would be filing a law suit in Washington for the recovery of a proper amount and I believed that such a suit would protect me if the Government were to pay to those persons a larger, more fair amount.

As a Japanese, I was evacuated during the War and had to leave my farming equipment behind. I did get paid for part of my loss when I filed an Evacuation Claim, but not the full amount. When I received the letter about taking such a small amount for my Yokohama Specie Bank deposit, I did not think it fair that I should be expected to take such a loss on my own money which the Government had seized.

/s/ SHIGEO KUMASHIRO.

Subscribed and sworn to before me this 18th day of November 1964

/s/ K. Mukaeda,
Notary Public in and for said County and State.

Filed January 8, 1965

AFFIDAVIT OF MICHIKO TERAO

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, MICHIKO TERAO, being first duly sworn, depose and say:

My maiden name was Michiko Hamada which is the name under which my claim number 51213 was filed with the Office of Alien Property for return of my money which was taken when the assets of the Yokohama Specie Bank were seized by the United States Government during World War II. I am one of the persons whose money the Government seeks to keep because I did not send in my original certificate of deposit although I at no time have been offered to be repaid the money I deposited with the bank and which the Government took and has.

The amount of my claim is a small one, being about 220 yen. I deposited the money with the bank in 1940 from earnings I had made from working. I was born in Long Beach, California in 1918 and when I went to work, tried to save what I could.

I married my husband, Kakuo Terao, in November, 1941. At that time my husband was in the United States Army. He is also of Japanese ancestry.

After World War II broke out, I, along with all persons of Japanese ancestry, was faced with evacuation from our home near Compton, California where my father was a farmer. My parents, with whom I was living, left before before being put in a camp and we went to Colorado where we all worked share cropping. We were not able to take all our things, just those things like bedding and personal papers and belongings which we were able to load on my father's small truck.

While we were in Colorado, my husband was sent overseas with the Army and was enroute to join the 442nd Regimental Combat Team. While he was in France, he was wounded in the spine so as to make him paralyzed from the waist down, in which condition he now and permanently

is. My husband also had served in the Pacific Theater of Operations. He was awarded the Purple Heart.

After my parents and I had returned to California after the war, I read in some newspaper about filing a claim for the return of the money I had deposited in the Yokohama Specie Bank. This was about 1947, I believe. It had been a long time, but I believe that I had accompanied my claim form with photostatic copies of my two certificates, one for 106.93 yen and the other for 113.16 yen or I later sent in such copies. In any event, I feel sure that the Office of Alien Propery had and has copies of my certificates. I knew that my claim was one of many that were being processed.

I recall receiving in about 1959, although I cannot remember the exact time and I cannot find the papers, a letter from the Office of Alien Property recognizing my claim as being a valid one, but offering to return not the amount of money I had deposited which I believe was around $50.00, but a very, very small amount, something like 60 or 70 cents. I did not believe that the amount offered was a fair one and I did not want to accept such a small amount. In trying to remember what the letter said, I do recall that I was asked to send in my original deposit certificates. It simply did not pay for me to do that. The offer, as I say, was about 60 or 70 cents, it would cost me that amount or more for photostating so that I would have copies of my certificates, plus the cost of registered mail and the regular mail would all add up to more than I would receive.

And so I did not send in my certificate, but at no time did I abandon my claim. I could not afford, in the light of even the full amount of my claim to do anything about it, but I expected that there would be further proceedings. I had heard that all of the claims were being treated as a class and I had heard that some kind of a law suit had been filed or would be filed in Washington, D.C. which I understood would, if successful, protect my right to receive my money back.

I cannot remember the exact sequence of events or even all the papers or notices I received, but I do know that I could do nothing about it because of the small amount of

money involved. However, the matter had been going on for many years and I fully expected that if recovery was allowed for others, it would also be allowed for me. I never intended to abandon my claim nor to let the Government keep my money.

/s/ MICHIKO TERAO.

Subscribed and sworn to before me this 25th day of November 1964

/s/ K. Mukaeda,
Notary Public in and for said County and State.

Filed January 13, 1965

AFFIDAVIT OF KATSUMA MUKAEDA

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, KATSUMA MUKAEDA, being first duly sworn, depose and say:

I am a person of Japanese ancestry. I was born in Japan in 1890 and have lived in the United States since 1908. I became a citizen of the United States on May 22, 1953, as soon as the law was changed and I was permitted to become a citizen. During all my life in the United States I have lived and worked in the Japanese community.

I have worked as interpreter and scrivener for Japanese persons who could not, at all or well, read or write English. I have assisted and worked with persons in the Japanese community in connection with a number of matters arising out of the fact that they were Japanese aliens in this country or because they were simply Japanese. For example, I have worked with Japanese persons in connection with their claims under the Japanese Evacuation Claims Act and in immigration matters.

I am the current president of the Japanese Chamber of Commerce of Southern California, the Executive Secretary of the Japan-America Society and I am an interpreter in the courts of Los Angeles County to translate from Japanese to English and from English to Japanese.

I have talked, both here in Los Angeles, as well as in San Francisco, California and in Honolulu, Hawaii, with many Japanese persons who are yen deposit claimants with the Yokohama Specie Bank concerning their failure to have sent in their original deposit certificates in 1958 and 1959 when the Office of Alien Property asked that the original certificates be sent in and their failure to file a law suit with regard to their claims. Also, I have general knowledge, based upon my experience in and as a part of the Japanese community, as to the feelings, fears and apprehensions which were felt when the original certificates were called

for and when the claims were denied. Based upon these conversations and experience, I say, on information and belief:

Many of the Yokohama Specie Bank yen deposit certificate holders were old people who could not read English and could not understand the communications they received from the Office of Alien Property; many of them had to rely upon other persons who themselves were not able to understand the letters; most of the claimants had never talked to a lawyer about their cases and there was a general feeling in the community that all of the claims were going to be treated alike, both the Sumitomo Bank claimants and the Yokohama Specie Bank claimants; there was knowledge in the community that a law suit had been filed in Washington and it was understood and believed that the outcome of that law suit would determine how much money the claimants received and that it would apply to all claimants not just some; most of the claimants had had experience with or had heard about the Japanese Evacuation Claims program (50 USC Appx. 1981-1987) and many of them knew generally that under that program, deadlines had been extended and even that the law itself had been changed to include persons who originally were not eligible, to be eligible for repayment of some of their losses due to the Japanese evacuation program, and that persons who previously had been denied payment, later were paid; the claimants are all persons of Japanese ancestry and so, of course, were evacuated from their homes, farms and businesses during the War solely by reason of that fact; that experience left an impact on the claimants with regard to the treatment of them by the Government; I am not a psychologist and so I cannot say what the psychological effects were, but that there were effects, I have no doubt; since the original certificates of deposit were the claimants' only direct evidence of their claim, many of the claimants were reluctant to part with this evidence, especially at a time when the Government was recognizing their claims at less than 2% of their face value, to say nothing of accumulated interest over the years; moreover, many of them felt that to send in their certificates at that time would be taken

as agreeing to accept this very small sum in full settlement and they did not want to do that; there were others whose claims were so small that to send in the originals at the figure the Government was offering would net them no return or a very small amount; as individuals, even those claimants who did not have very small claims could not afford to hire an individual lawyer in Washington or to file their own suit but had to rely on what was being done generally and many of them believed that in the end their Government would not try to keep their money but would return it.

/s/ KATSUMA MUKAEDA.

Subscribed and sworn to before me this 12th day of January 1965.

/s/ J. B. Tietz,
Notary Public in and for said County and State.

Filed September 4, 1964

ANSWER

Defendant, for his answer to the Complaint:

I. Denies each and every allegation of paragraph 1 of the complaint.

II. Denies the allegation of paragraph 2 of the complaint that the plaintiffs' certificates of deposit were redeemable upon demand in dollars at the offices of the Yokohama Specie Bank Ltd. in the United States, but except as thus expressly denied, admits the allegations of paragraph 2 of the complaint.

III. Admits the allegation of paragraph 3 of the complaint.

IV. Denies the allegation of paragraph 4 of the complaint that the vested property of the Yokohama Specie Bank Ltd. in the United States included funds that the plaintiffs had on deposit there but except as thus expressly denied admits the allegations of paragraph 4 of the complaint.

V. Admits the allegations of paragraph 5 of the complaint.

VI. Denies each and every allegation of paragraph 6 of the complaint.

VII. Denies the allegation of paragraph 7 of the camplaint that the proposed payment at the ratio of 361.66 yen per dollar was legally erroneous, inadequate and arbitrary but except as thus expressly denied, denies any knowledge or information sufficient to form a belief as to each and every allegation of paragraph 7 of the complaint.

VIII. Denies each and every allegation of paragraph 8 of the complaint.

IX. Admits the allegations of paragraph 9 of the complaint, except that defendant denies that Claim No. 17796 of plaintiff, Gensuke Yoshida, was dismissed by defendant but asserts that it was withdrawn by Genuske Yoshida by Notice of Cancellation card, dated December 1, 1958; and defendant asserts that there are others in plaintiff Yoshida's situation.

X. Admits the allegations of paragraph 10 of the complaint.

XI. Admits the allegations of paragraph 11 of the complaint, except for the concluding sentence of paragraph 11, the allegations of which are denied.

XII. Denies each and every allegation of paragraph 12 of the complaint.

XIII. Denies each and every allegation of paragraph 13 of the complaint.

XIV. Denies any knowldege or information sufficient to form a belief as to each and every allegation of paragraph 14 of the complaint.

WHEREFORE, defendant demands judgment dismissing the complaint.

JOHN W. DOUGLAS,
Assistant Attorney General,
Civil Division.

ANTHONY L. MONDELLO,
ARMAND B. DUBOIS,
Attorneys for Defendant,
Department of Justice,
Offices of Alien Property.

Filed December 29, 1964

DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

Defendant moves to dismiss the complaint on the ground that the Court lacks jurisdiction over the subject matter of this action because it was not commenced within the time set forth in Section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f)).

/s/ JOHN W. DOUGLAS,
Assistant Attorney General.

/s /ANTHONY L. MONDELLO,
/s/ ARMAND B. DUBOIS,
Attorneys for Defendant.

Form AUSC-1C
September 1946

Form approved.
Budget Bureau No. 01-R037.

UNITED STATES OF AMERICA
OFFICE OF ALIEN PROPERTY CUSTODIAN
WASHINGTON 25, D. C.

DO NOT WRITE IN THIS SPACE
Claim No. 49102
V. O. No(s). 1271
Issued
Effective
Account Nos. 2349 2

NOTICE OF CLAIM FOR PAYMENT OF DEBT

(Please read the instructions before filling out the form)

1. Claimant's name Kaoruchi Murakami
(Person who now owns the claim, not an agent or attorney)

Have you already filed notice of claim for this debt? Yes ☐ No ☑ (*Check one*). If yes, give claim No. ——

2. Agent for service of notice (if any) ——
(Person to whom notices and letters should be sent)

Address for service of notice 102 W. 1st So. Salt Lake City, Utah
(If you have no agent, give your own mailing address)

3. Identification of debtor and property:

(a) Name of debtor Yokohama Specie Bank LTD.
(Person who owes the debt you want paid)

(b) Identification of property of debtor taken by Custodian:
Vesting Order(s) No. ——

Brief description Deposits at the Yokohama Specie Bank
(In general terms, as "100 shares X corporation common stock," "deposit at X Bank," "real estate in X city")

(c) Supplemental identification:
(See Instruction D (2). If you are not able to supply information called for by both (a) and (b) of this item, state in a supplement to this item any further information that will assist the Custodian in determining whether he holds any property available for payment of claims against the debtor named; for example, other names including trade names or corporate names under which the debtor did business or kept his property, the address or addresses of the debtor, any property of this debtor that you know exists in the United States.)

4. Amount claimed (fill out each line; if inapplicable, write "none").

(a) Principal . . . . . $ 3828.23 2,692.75
(State the original amount of the debt without interest. If the amount is unliquidated, state the amount you claim)

(b) Additions other than interest . . . . . $ None
(Penalties, protest fees, etc.)

(c) Total before deductions . . . . . $ 6520.98

(d) Payments on account . . . . . $ None

(e) Other deductions . . . . . $ ——
(Indicate nature)

(f) Total deductions . . . . . $ None

(g) Net amount claimed, without interest . . . . . $ 6520.98

(h) Do you claim interest? Yes ☑ No ☐ (*Check one*).

If yes, give rate, period, and amount, as follows:

3 3/4 percent, from May 27, 1941 (Day, month, year) to October 31, 1945 (Day, month, year) totaling . $ 2,189.72

5. Nature of debt Bank deposits (2)
(In general terms, as "bank deposit," "merchandise supplied," "promissory note," "damages for contract not performed," "refund on steamship ticket.")

6. Date debt arose 7th (Day) December (Month) 1941 (Year)

7. Security you now hold, if any ——
(In general terms, as "mortgage of real estate," "pledge of stock certificates." If debt is not secured, state "not secured." If property securing your debt has been taken by the Custodian, see Instruction A.)

8. Priority claimed, if any (see sec. 34 (g) of the Act, reprinted on the instruction sheet).
Wages and salaries (sec. 34 (g) (1)) . . . . . $ ——
Taxes of United States (sec. 34 (g) (2)) . . . . . ——
Service rent, goods, etc. (sec. 34 (g) (3)) . . . . . ——
None . . . . . ——

16—49500-1

9. Details of debt.

(State in detail the facts upon which you base the statements made in items 4, 5, 6, 7, and 8. Attach copies of any contracts, notes, or other documents upon which you rely to prove the amount, date, nature, and any security status or priority status of the debt.)

Debts arose due to the buying of the Yokohama Spice Bank LTD. accounts Nos 2 deposits with the bank with the certificate numbers of 83115 & 84716

(Continue on a supplement if necessary)

16—40540-1

10. Defenses and counterclaims _____
(Here state in general terms the basis of any defense or counterclaim which the debtor has alleged, and its amount)

11. Questions for individual claimants (corporations do not answer).

Citizenship Japanese
(State name of country; if you have no citizenship, write "stateless")

Present residence address 102 W. 1st South Salt Lake City Utah
(Number) (Street) (City) (State)

Since September 1942
(Date when you began residing at this address)

(If you have resided at any other addresses at any time since December 7, 1941, state them all, with the dates of residence, at each address, in a supplement to this item.)

12. Questions for corporate claimants (individuals do not answer).

State in which incorporated _____ Date of incorporation _____

Principal office _____
(Number) (Street) (City) (State)

13. Additional questions for assignees, legal representatives, and successors in interest. (Do not answer these questions if you are the original creditor. Answer them only if you are filing a claim which originally belonged to someone else, and which you have acquired by assignment, by operation of law, or otherwise.)

(*a*) Original creditor's name _____

(*b*) Original creditor's address on date debt arose (see item 6) _____

(*c*) Latest date when original creditor held debt _____
(Day) (Month) (Year)

(*d*) If original creditor was an individual or a group of individuals, including a partnership, was he (they) a citizen of the United States or the Philippine Islands at all times he (they) held the claim? Yes ☐ No ☐ (*Check one*). If no, give country (countries) and dates of other citizenship _____

(*e*) If original creditor was an individual or a group of individuals, including a partnership, was he (they) a resident of the United States at all times he (they) held the claim? Yes ☐ No ☐ (*Check one*). If no, give country (countries) and dates of other residence _____

(*f*) If original creditor was a corporation, give State (or foreign country if not within the United States) and date of incorporation _____
(State or country)

Date of incorporation _____
(Day) (Month) (Year)

(*g*) Did you acquire the debt directly from the original creditor? Yes ☐ No ☐ (*Check one*). If no, use a supplement to answer questions (*a*) to (*f*) of this item, inclusive, for every other person who held the debt prior to your acquisition of it.

(*h*) How did you acquire the debt? _____
(In general terms, as "assigned," "heir," "executor," "reorganization of corporation," etc. Use a supplement to state details, and supply copies of documents relied on to establish your present ownership of the debt. If any such documents are court orders, the copy attached to the "original" of this form should be certified by the court or other competent official.)

(*i*) Are you the sole beneficial owner of the claim? Yes ☐ No ☐ (*Check one*). If no, name the other owners and state nature of their interest _____

14. If there are any other facts of which you wish to advise the Custodian, state them in a supplement to this item.

Fees of attorneys, agents, and representatives:

Name of attorney, agent, or representative	*Address*	*Amount of fee*
		$
		$

(Give the name of each person (or firm) who has received or is to receive any fee for representing you in this claim. If there is no such person, write "none." If the amount of the total fee has been fixed, state it. If it has not, write "unknown," but the amount will have to be supplied before any payment of your claim can be made. Attorneys may submit detailed schedules of services performed and will be required to do so in appropriate cases. See section 20 of the Trading With the Enemy Act, on the instruction sheet.)

16. I, the undersigned, swear to (or affirm) the following:

(a) (Strike out the statement that does not apply.)

I am the claimant named in item 1.
~~I am an officer of the claimant corporation holding the position of~~ _____

(b) The statements made in this notice of claim and in any supplements attached to it are known to me to be true, except as noted to be "upon information and belief."

(c) ~~I have no knowledge of any fact called for by this notice of claim (including the instructions) which is not fully set forth.~~

Kanekichi Murakami
(Signature)

KANEKICHI MURAKAMI
(Name of signer)—(Please print or typewrite)

NOTE.—It is a criminal offense to make a willfully false statement or representation to any department or agency of the United States Government. U. S. Code, Title 18, sec. 80.

16—49500-1 U. S. GOVERNMENT PRINTING OFFICE

ABD:DRW:11
Claim No. 49102

July 29, 1959

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Mr. Kanekichi Murakami,
450 No. 12th West,
Salt Lake City, Utah.

Dear Mr. Murakami:

Reference is made to the above-numbered debt claim which has been filed with this Office with respect to the insolvent account of the Yokohama Specie Bank, Ltd. The claim is based upon yen certificates of deposit.

The Director of this Office decided on November 13, 1957, *In the Matter of Kunio Abe, et al.*, Claim No. 55507, Docket No. 55 D 72, which decision the Attorney General has declined to review, that yen certificates of deposit issued by the Yokohama Specie Bank, Ltd. and the Sumitomo Bank, Ltd. are obligations payable in yen in Japan, and that claims based on such certificates of deposit are to be allowed and paid in United States currency at the post war rate of exchange in accordance with the "Judgment Day" rule set forth in *Deutsche Bank* v. *Humphrey*, 272 U.S. 517 (1926). Thus, the current rate of exchange of 361.55 yen to one dollar must be used in converting the yen into a dollar amount. Interest is allowable from the date of deposit to the date of payment.

Therefore, if you submit your original certificates of deposit to this Office, I can recommend your claim for allowance in the sum of $18.03 plus interest. If you have lost your certificates, you should prepare a statement setting out that the deposits were made as alleged in the Notice of Claim form, giving the numbers of the certificates, the dates of the deposits, and the branch of the Bank at which the certificates were purchase. You should also state that you have not received payment from the Bank or accepted renewed certificates of deposit. This statement should be

signed and sworn to by you before a Notary Public and forwarded to this Office in support of your claim.

Payment of your claim, however, will not be made immediately. Under the procedures set forth in section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f)), it is necessary that all of the approximately 9000 claims filed against the Yokohama Specie Bank, Ltd. be reviewed and a schedule issued showing the proposed payments before any payments can be made. Within sixty days after the issuance of the schedule, any aggrieved claimant my file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Attorney General as defendant. If no complaint for review is filed, payments will be made in accordance with the schedule.

Advice received by this Office is to the effect that yen certificate of deposit accounts are carried on the books of the Yokohama Specie Bank, Ltd. in Japan, and the funds may be withdrawn in that country or transferred to the Bank of Tokyo, Ltd. Under the circumstances, you may wish to utilize the funds in Japan rather than await settlement by this Office. If this is done, the Notice of Claim filed with this Office should be canceled by signing and mailing the enclosed Notice of Cancellation of Claim card.

If, however, you wish to maintain your claim with this Office you are requested to submit the original certificates of deposit or the notarized statement as to why they cannot be forwarded. In the event you object to the allowance of your claim in the amount stated above, you should submit the certificates to this Office within the next forty-five days and file a statement specifying your objections, together with the reasons in support thereof. Upon receipt of your objections, if I consider them to be without merit, I shall apply to the Director of this Office, pursuant to section 502.25(i) of the Rules of Procedure for Claims, a copy of which is enclosed, for the entry of an Order allowing your claim in the principal amount stated above, plus interest, and dismissing any portion over and above that amount on the ground that there is no debt due and owing to you by the Yokohama Specie Bank, Ltd. in excess of that amount.

In acting upon my application, the Director will consider the statement of objections that you may have submitted.

On the other hand, if within the next forty-five days you do not submit the original certificates of deposit or a statement explaining why they cannot be forwarded, I shall conclude that the claim has been abandoned in its entirety and, without further notice to you, shall apply to the Director for the entry of an Order dismissing the claim on the ground of abandonment, pursuant to section 502.25(g) and (i) of the Rules of Procedure for Claims.

To recapitulate:

1. If you wish to maintain your claim with this Office, you should within forty-five days forward the original certificates of deposit and, if you wish to do so, file a statement of your objections to the allowance of the claim in the amount stated above.

2. If you wish to maintain your claim but do not have the original certificates of deposit, you should within forty-five days submit a statement, signed and sworn to before a Notary Public, giving the details of the deposits and stating that you have not received payment or renewed certificates. If you wish to do so, you may also file a statement of your objections to the allowance of the claim in the amount stated.

3. I shall then apply to the Director for an Order allowing your claim in the principal amount stated above, plus interest, and dismissing any portion over and above that amount. Where objections have been filed, they will be submitted to the Director for his consideration in acting upon your claim.

4. If, within forty-five days, you do not submit the original certificates of deposit or an explanation as to why you cannot forward them, I shall conclude that the claim has been abandoned and shall apply to the Director for an Order dismissing the claim on that ground.

5. If you prefer to utilize the funds in Japan, you should sign and mail the inclosed Notice of Cancellation of Claim card in order to clear the records of this Office.

Please note that the original certificates must be submitted; photostatic copies cannot be substituted.

Sincerely yours,

/s/ DANIEL G. MCGRATH,
Chief, Claims Administration Section
Office of Alien Property.

Enclosures

cc: Wirin, Rissman & Okrand,
Attorneys at Law,
257 South Spring Street,
Los Angeles 12, California.

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
Office of Alien Property
Washington, D. C.

Debt Claim No. 49102

In the Matter of: KANEKICHI MURAKAMI—Claimant (Insolvent Estate of the Yokohama Specie Bank, Ltd., alleged debtor, V.O. Nos. 1501, et al.)

ORDER DISMISSING DEBT CLAIM
(Abandonment)

Pursuant to section 502.25(i) of the Rules of Procedure for Claims of this Office (8 CFR 502.25(i)), the Chief of the Claims Administration Section by letter dated July 29, 1959, notified the claimant by registered mail, return receipt requested, that unless necessary information for the processing of the claim under section 34 of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34), was received within forty-five (45) days from the date of said letter, he would apply to the Director for an Order dismissing the claim on the ground of abandonment. A copy of section 502.25(g) and (i) of the Rules of Procedure for Claims was enclosed with the letter, setting forth the claimant's right to object to the proposed dismissal. More than forty-five days have elapsed since the mailing of the letter and no reply has been received with respect thereto.

Upon the application of the Chief of the Claims Administration Section and finding that the said claim has been abandoned;

IT IS ORDERED that this claim be and it is hereby dismissed and disallowed. It should be noted that the aggregate of debt claims filed against the Yokohama Specie Bank, Ltd., exceeds the money from which payment may be made by this Office and that any further proceedings are governed by section 34(f) of the Trading with the Enemy Act, as amended.

Dated at Washington, D. C. 29 September 1959.

(signed) PAUL V. MYRON.
DALLAS S. TOWNSEND,
Assistant Attorney General.
Director, Office of Alien Property.

DGMcG:ABD:djw
Claim No. 49102

REGISTERED MAIL #784314
CLAIMANT: Kanekichi Murakami,
450 No. 12th West,
Salt Lake City, Utah.

NOTICE

Attached is a copy of a Final Schedule issued under Section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34), in respect of the Yokohama Specie Bank, Ltd., an insolvent debtor, listing the claims in respect of said debtor allowed as priority (3) claims and as non-priority claims and the payments to be made thereon. If your claim is not shown on the Schedule, it is for the reason that the claim has been dismissed and disallowed by this Office.

This Schedule is being served by registered mail on all claimants listed therein, as well as on claimants whose claims have been dismissed and disallowed. Pursuant to Section 34(f) of the Trading with the Enemy Act, as amended, any claimant considering himself aggrieved by this Final Schedule may, within sixty (60) days from the date of the mailing of the Schedule, file in the United States District Court for the District of Columbia a complaint for review of this Schedule, naming the Attorney General as defendant. A copy of such complaint must be served on the Attorney General and on each claimant named in the Schedule. If no such complaint for review is filed within the sixty-day period, payments to claimants will be made by this Office as specified in the Final Schedule.

Date. October 4, 1961.

PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

Enclosure

Filed December 29, 1964

AFFIDAVIT

JULIAN M. HARE, being duly sworn, deposes and says:

1. I am the duly appointed Records Officer of the Office of Alien Property, Department of Justice, and as such I have custody of all the files and records relating to the operation of the Office.

2. I have caused a diligent search to be made of the records and files in my custody to ascertain when copies of the Yokohama Specie Bank Ltd. Final Schedule signed by the Deputy Director of the Office of Alien Property on May 11, 1961, were mailed by registered mail to claimants who had filed debt claims against the vested property of the Yokohama Specie Bank Ltd., which had not been withdrawn, as required by Section 34(f) of the Trading with the Enemy Act, 50 U.S.C. App. 34(f).

3. My examination of the said files disclosed that such Yokohama Specie Bank Ltd. Final Schedules were mailed to the claimants between August 22, 1961 and October 19, 1961, inclusive.

JULIAN M. HARE.

Sworn to before me this 20th day of November, 1964.

DONNA A. COWDEN,
Notary Public, District of Columbia.

[SEAL]

My Commission expires September 30, 1966.

Filed March 31, 1965, Harry M. Hull, Clerk

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1179-64

AYAKO HONDA, ET AL., *Plaintiffs,*

v.

NICHOLAS deB. KATZENBACH, Attorney General of the United States, *Defendant*

ORDER

Defendant's motion to dismiss having come on for hearing and the Court having considered the memoranda in support thereof and in opposition thereto, having heard argument of counsel, and having concluded that the Court lacks jurisdiction over the subject matter of this action because it was not commenced within the time set forth in Section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f), it is this 31st day of March, 1965

ORDERED that plaintiffs' complaint be and the same is hereby dismissed.

WILLIAM B. JONES,
Judge.

Filed April 2, 1965

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil No. 1179-64

AYAKO HONDA ET AL, *Plaintiffs,*

vs.

NICHOLAS deB. KATZENBACH, *Defendant.*

NOTICE OF APPEAL

Notice is hereby given this 2nd day of April, 1965, that plaintiffs hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 31st day of March, 1965, in favor of Defendant against said Plaintiffs.

JOHN SILARD,
Attorney for Plaintiffs,
1625 K Street, N.W., D.C.

MASAE KONDO

No. 19,282

Filed July 9, 1964

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1630-64

MASAE KONDO, 4216 Cumberland Avenue, Los Angeles, California 90027, on behalf of herself and on behalf of all others similarly situated, *Plaintiff*,

v.

ROBERT F. KENNEDY, Attorney General of the United States, Department of Justice Building, Washington 25, D. C., *Defendant*.

COMPLAINT FOR DECLARATORY AND OTHER RELIEF

1. This Court has jurisdiction under 5 USC 1009, 28 USC 1331, 1357 and 2201, and 50 USC Appx. 34f, as amended.

2. Plaintiff is a former depositor in the Yokohama Specie Bank, Ltd., and had assets on deposit in said bank on December 7, 1941, evidenced by Certificates of Deposit issued to her, or those through whom she claims, in the United States in exchange for the deposit of dollars in said bank, which Certificates were redeemable upon demand in dollars at the offices of the bank in the United States or in Yen at the offices of the bank in Japan.

3. Defendant, Robert F. Kennedy, is the Attorney General of the United States. He is a successor in office to the Alien Property Custodian who on December 7, 1941 seized, and in 1943, pursuant to the Trading with the Enemy Act as amended (50 USC Appx. 34, 620), vested certain properties of the Yokohama Specie Bank, Ltd., including the funds plaintiff had on deposit therewith. Unless otherwise stated, the term defendant will be used hereinafter to refer to the named defendant and/or his predecessors in office or the Office of Alien Property, or his agents, as the context may require.

4. Plaintiff files this action on her own behalf and on

behalf of all persons similarly situated, namely those persons who filed timely debt claims with defendant pursuant to the Trading with the Enemy Act, but whose claims the defendant dismissed but who did not receive notice from defendant of said dismissal; and who had no knowledge of such dismissal.

5. On or about March 27, 1964, plaintiff learned for the first time, from newspaper accounts in the Japanese press, that her claim was not covered by the settlement which had been reached in *Abe* v. *Kennedy*, Civil Action Number 2529-61 in this Court.

6. Whereupon, through counsel, plaintiff, on or about April 3, 1964 communicated with defendant and made application to him for recognition of her claim and payment thereof. Said communication and application are referred to herewith, incorporated herein as though fully set forth and a copy thereof, including the affidavit referred to in said letter, are attached hereto as Exhibit A.

7. Thereafter, defendant advised plaintiff's attorney over the telephone that he was considering plaintiff's claim.

8. Subsequent thereto, on or about April 27, 1964, plaintiff's attorney was advised by defendant that if plaintiff did not have notice that her claim was dismissed and that her claim was not included in the Final Schedule, the defendant would allow the plaintiff's claim and pay said claim in the same proportion to be paid to claimants by virtue of the settlement in *Abe* v. *Kennedy*, Civil Action No. 2529-61 in this Court.

9. By letter dated May 13, 1964, defendant refused to allow plaintiff's claim. Said letter is referred to herewith, incorporated herein as though fully set forth and a copy thereof attached hereto as Exhibit B.

10. Plaintiff has no information or basis for stating and she does not state that defendant did not, on or about September 8, 1961, mail a copy of the Yokohama Specie Bank Final Schedule to her at 3619½ Bellevue Avenue, Los Angeles 26, California as set forth in defendant's letter of May 13, 1964, Exhibit B hereto. But plaintiff does state that she did not receive a copy of it. In this connection, plaintiff alleges that she moved from the Bellevue Avenue

address to her present address on Cumberland Avenue in or about January, 1959.

11. The refusal of defendant to pay plaintiff's valid debt claim is injurious, inequitable, contrary to the statutory rights of plaintiff and deprives her of property without due process of law.

12. Plaintiff is informed and believes and therefore alleges that there are others similarly situated with her who did not get proper notice and whose valid debt claims were not recognized by defendant.

WHEREFORE, plaintiff prays that she and those similarly situated with her, have their claims recognized at the ratio of 23.4 cents per yen or, in the alternative, on the same basis as the plaintiffs in the case of *Abe* v. *Kennedy*, No. No. 2529-61 in this Court, and for other appropriate relief.

JOSEPH L. RAUH, JR.,
JOHN SILARD,
1625 K Street, N.W.,
Washington 6, D. C.

A. L. WIRIN,
FRED OKRAND,
257 South Spring Street,
Los Angeles 12, California,
Attorneys for Plaintiff.

O/s

EXHIBIT A

3 April 1964

Certified Mail No. 289880
Return Receipt Requested

Armand DuBois, Esq.,
Department of Justice,
Washington 25, D. C.

Re: Mrs. Masae Kondo (nee Wakasugi), Yokohama Specie Bank, yen deposit certificate claim No. 4018 (Matter of the Insolvent Account of: The Yokohama Specie Bank, Ltd., Vesting Orders Nos. 915, et al, Accounts No. 39-23487-23492, inclusive, in the Office of Alien Property, Department of Justice) (Aratani v. Kennedy, Civil Action No. 3164-58; Sumiyoshi v. Kennedy, Civil Action No. 3228-58; Shigeno v. Kennedy, Civil Action No. 1176-59; Abe v. Kennedy, Civil Action No. 2529-61, all US DC DC)

Dear Mr. Dubois:

As you will see from the enclosed affidavit, Mrs. Kondo received no notification of the determination by the Office of Alien Property of her or any Yokohama Specie Bank yen deposit claim, nor of the fact, if it be a fact, that her claim was dismissed, nor of the fact that her name was not included in the Final Schedule of the Yokohama Specie Bank claims.

It is clear that, just as with her Sumitomo Bank claim, she expected to be included in any determination that was made and to process her claim to a conclusion. Accordingly, it would seem proper that she be included as among those who will participate in the distribution of the Yokohama Specie bank funds following conclusion of the court matters.

I write to request, and to ascertain, whether you will join with this office on behalf of Mrs. Kondo in an appropriate motion, or other proceeding, before the Court or the Office of Alien Property, to amend the Final Schedule or to otherwise include Mrs. Kondo in the distribution. You will note

that with her affidavit, her first opportunity, she attached her original certificates.

Your early consideration and reply will be appreciated.

Sincerely yours,

FRED OKRAND.

FO/s
Enc.

Certified Mail No. 289880, Return Receipt Requested

bcc: Mrs. Kondo

EXHIBIT B

May 13 1964

UNITED STATES DEPARTMENT OF JUSTICE
Washington, D.C.

ALM:BSA:ABD:lhm
Claim No. 30418

AIR MAIL

Mr. Fred Okrand
257 South Spring Street
Los Angeles 12, California

Dear Mr. Okrand:

Reference is made to your letter of April 3, 1964, with enclosed affidavit, concerning the above-numbered debt claim based upon certificates of deposit, totalling yen 15,-216.82 or $42.07 at the post-war rate of exchange, that Mrs. Masae Kondo filed with this Office against the vested property of The Yokohama Specie Bank Ltd. under Section 34 of the Trading with the Enemy Act, as amended, 50 U.S.C. App. 34. Mrs. Kondo states in her affidavit that she has never received any communication from the Office of Alien Property requesting her to submit the original certificates of deposit or notifying her that her claim had been dismissed and was not included in The Yokohama Specie Bank Ltd. Final Schedule. Mrs. Kondo submits the original certificates at this time and requests that her claim be reinstated.

The records of this Office show that Mrs. Kondo's claim against The Yokohama Specie Bank Ltd. was dismissed on January 22, 1959 on the ground of abandonment, pursuant to Section 502.25(i) of the Rules of Procedure for Claims, when a registered letter, return receipt requested, dated November 28, 1958, from this office, requesting that Mrs. Kondo submit the original certificates on which the claim

was based, was returned by the Post Office with the notation "Unknown." By inadvertence, the letter of November 28, 1958 and the copy of the dismissal order of January 22, 1959 were mailed to Mrs. Kondo at her former address at 636 N. Virgil Avenue, Los Angeles 4, California. However, a copy of The Yokohama Specie Bank Ltd. Final Schedule with accompanying Notice which was sent to Mrs. Kondo by registered mail on September 8, 1961, was sent to her correct current address of 3619½ Bellevue Avenue, Los Angeles 26, California. Since Mrs. Kondo's claim had been dismissed, it did not appear on The Yokohama Specie Bank Ltd. Final Schedule.

On this state of facts, no basis has been shown for reinstating Mrs. Kondo's claim. As required by Section 34(f) of the Act, and by Section 502.202(e) of the Rules of Procedure for Claims (8 CFR 502.202), Mrs. Kondo was properly served with a copy of The Yokohama Specie Bank Ltd. Final Schedule. The Notice attached to the copy of the Final Schedule, which was mailed to Mrs. Kondo on September 8, 1961 at her Bellevue Avenue address, informed her that if she considered herself aggrieved by the failure of her claim to appear on the Final Schedule she could file a complaint for review of the Final Schdeule under Section 34(f) of the Act within 60 days from the date of the mailing of the Final Schedule. No timely complaint was filed by Mrs. Kondo.

The proposed compromise settlement of yen deposit claims, provisionally approved on March 17, 1964 by Judge Leonard P. Walsh in the United States District Court for the District of Columbia, will benefit only Sumitomo Bank Ltd. and Yokohama Specie Bank Ltd. yen deposit claimants who claims appeared on the Final Schedules of the two banks issued under Section 34(f) of the Act as allowed at the post-war rate of exchange, and who participated in the litigation respecting yen deposit claims. As far as her claim against The Yokohama Specie Bank Ltd. is concerned, Mrs. Kondo cannot qualify for inclusion in this group.

I am returning the original certificates of deposit attached to Mrs. Kondo's affidavit.

Very truly yours,

JOHN W. DOUGLAS,
Assistant Attorney General.
Civil Division.

By: ANTHONY L. MONDELLO,
Deputy Director,
Office of Alien Property.

Enclosures

AFFIDAVIT OF MRS. MASAE KONDO

RE: Yokohama Specie Bank deposits

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, MASAE KONDO, being duly sworn, depose and say:

My maiden name was Wakasugi.

On September 9, 1947 and again on October 14, 1947 I wrote the Office of Alien Property. A copy of said letters is attached hereto as Exhibit A.

In October, 1947 I received a letter dated October 21, 1947 from the Office of Alien Property. A copy of said letter is attached hereto as Exhibit B.

Purusuant to said letter of October 21, 1947, and on or about October 28, 1947, I sent in to the Office of Alien Property, Department of Justice, 2 Notice of Claim for Payment of Debt forms No. APC-1c. One form was for my deposits with the Sumitomo Bank for certificate numbers 12490, 17685, 17315, 17314, 17375, 17741. The second form was for my deposits with the Yokohama Specie Bank for certificate numbers 71592 (Yen 1,182.51), 71593 (Yen 1,166.17), 71651 (Yen 5,028.24), 71652 (Yen 7839.90). The certificates in both banks were made out in the name of either my deceased mother (Katsue Wakasugi) or my deceased father (Mankichi Wakasugi) or in the case of only one, as I now recall (No. 71593 of the Yokohama Specie Bank), in the name of my father and myself. The total number of yen as to the Yokohama Specie Bank certificates is 15,216.82. The amount as to Sumitomo is Yen 5066.

At the same time I sent in the claim forms I attached photostatic copies of the certificates as to both banks.

By postcard dated November 12, 1947, I received acknowledgment from the Office of Alien Property of the receipt of the forms. A copy of that postcard is attached hereto as Exhibit C.

By letter dated November 4, 1948, I received what I take it was the formal notice from the Office of Alien Property

of my Sumitomo Bank claim. A copy of that letter is attached hereto as Exhibit D.

I also received a letter dated November 26, 1947 from the Office of Alien Property similar to the one I had received dated October 21, 1947 (Exhibit B attached hereto). A copy of that letter is attached hereto as Exhibit E.

In January, 1949, I received what I take it was the formal notice from the Office of Alien Property of my Yokohama Specie Bank claim. A copy of said letter is attached hereto as Exhibit F.

When I moved from Chicago, to Los Angeles, in 1948, I notified the Office of Alien Property that my address was changed from 2150 N. Lincoln Avenue, Chicago 14, Illinois to 636 N. Virgil Avenue, Los Angeles, California.

In 1951 we moved from the Virgil Avenue address to 3619½ Bellevue Avenue, Los Angeles 26, California and I notified the Office of Alien Property of that change by letter dated August 28, 1951.

In February, 1958, I received a letter dated February 3, 1958 regarding my Sumitomo Bank Claim. Attached hereto is a copy of that letter as Exhibit G.

I replied to the letter of February 3, 1958 on February 27, 1958 as per copy attached hereto as Exhibit H. At the same time, per the request in the February 3 letter, I sent in my original Sumitomo Bank certificates.

On or about October 28, 1958, I received in the mail from the Office of Alien Property a pamphlet entitled "Final Schedule", "In the Matter of the Insolvent Account of The Sumitomo Bank, Ltd., Vesting Orders Nos. 162, et al. Account No. 39-705." This Sumitomo Bank Final Schedule is the last communication I received from the Office of Alien Property. I received no communication, similar to the letter of February 3, 1958 (Exhibit G attached hereto) advising me that any determination had been made of my Yokohama Specie Bank claim nor asking me to send in the original deposit certificates, nor did I receive any "Final Schedule" as to the Yokohama Specie Bank. I did not know that any ruling had been made as to the Yokohama Specie Bank until I read about it in a newspaper on or about Friday, March 27, 1964.

On March 31, 1964 I notified the Office of Alien Property of my change of address from Bellevue Avenue to 4216 Cumberland Avenue, Los Angeles, California 90027.

It has been my intention all along to process my Yokohama Specie Bank claim. It is in a larger amount than the Sumitomo Bank claim. Had I received a letter regarding my Yokohama Specie Bank claim similar to the letter of February 3, 1958 (Exhibit G attached hereto) regarding my Sumitomo Bank claim or any request for me to send in my Yokohama Specie Bank certificates, I would have done so just as I did in the case of my Sumitomo Bank certificates. I attach hereto said 4 original Yokohama Specie Bank Certificates.

MAESE KONDO.

Subscribed and sworn to before me this 3rd day of April 1964.

Sheila M. Schaum,
Notary Public in and for said County and State.

My Comm. Exp. May 1, 1964.

EXHIBIT G

DEPARTMENT OF JUSTICE
Office of Alien Property
Washington 25, D.C.

February 3, 1958.

ABD:DBW:hhl
Claim No. 30417

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Mrs. Masae Kondo,
3619½ Bellevue Avenue,
Los Angeles 26, California.

Dear Mrs. Kondo:

Reference is made to the above-numbered debt claim which has been filed with this Office with respect to the insolvent account of the Sumitomo Bank, Ltd. The claim is based upon yen certificates of deposit.

The Director of this Office decided on November 13, 1957, *In the Matter of Kunio Abe, et al.*, Claim No. 55507, Docket No. 55 D 72, which decision the Attorney General has declined to review, that yen certificates of deposit issued by the Yokohama Specie Bank, Ltd. and the Sumitomo Bank, Ltd. are obligations payable in yen in Japan, and that claims based on such certificates of deposit are to be allowed and paid in United States currency at the post war rate of exchange in accordance with the "Judgment Day" rule set forth in *Deutsche Bank* v. *Humphrey*, 272 U.S. 517 (1926). Thus, the current rate of exchange of 361.55 yen to one dollar must be used in converting the yen into a dollar amount. Interest is allowable from the date of deposit to the date of payment.

Therefore, if you submit your original certificates of deposit to this Office, I can recommend your claim for allowance in the sum of $14.00 plus interest. If you have lost your certificates, you should so advise me and state the branch in Japan of the Bank to which the remittances were

forwarded. We will then attempt to trace your deposits on the records of the Bank.

Payment of your claim, however, will not be made immediately. Under the procedures set forth in section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f)), it is necessary that all of the approximately 9000 claims filed against the Sumitomo Bank, Ltd. be reviewed and a schedule issued showing the proposed payments before any payments can be made. Within sixty days after the issuance of the schedule, any aggrieved claimant may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Attorney General as defendant. If no complaint for review is filed, payments will be made in accordance with the schedule.

Advice received by this Office is to the effect that yen certificate of deposit accounts are carried on the books of the Sumitomo Bank, Ltd. in Japan, and the funds may be withdrawn in that country. Under the circumstances, you may wish to utilize the funds in Japan rather than await settlement by this Office. If this is done, the Notice of Claim filed with this Office should be withdrawn by signing and mailing the enclosed Notice of Withdrawal card.

If, however, you wish to maintain your claim with this office, you are requested to submit the original certificates of deposit and to amend your claim to the above amount. A letter stating that you are willing to so amend your claim will be sufficient. In the event you object to the allowance of your claim in this amount, you should submit the certificates to this Office within the next thirty days and file a statement specifying your objections, together with the reasons in support thereof. Upon receipt of your objections, if I consider them to be without merit, I shall apply to the Director of this Office, pursuant to section 502.25(i) of the Rules of Procedure for Claims, a copy of which is enclosed, for the entry of an Order allowing your claim in the principal amount stated, plus interest, and dismissing any portion over and above that amount on the ground that there is no debt due and owing to you by the Sumitomo Bank, Ltd. in excess of that amount. In

acting upon my application, the Director will consider the statement of objections that you may have submitted.

On the other hand, if within the next thirty days you do not submit the original certificates of deposit or an explanation as to why they cannot be forwarded, I shall conclude that the claim has been abandoned in its entirety and, without further notice to you, shall apply to the Director for the entry of an Order dismissing the claim on the ground of abandonment, pursuant to section 502.25(g) and (i) of the Rules of Procedure for Claims.

To recapitulate:

1. If you wish to maintain your claim, you should within thirty days forward the original certificates of deposit and:

   a. Amend your claim to the amount stated, or

   b. State your objections to the allowance of the claim in that amount.

2. If you wish to maintain your claim but do not have the original certificates of deposit, you should so advise me within thirty days, giving the name of the branch in Japan to which your funds were remitted, and:

   a. Amend your claim to the amount stated, or

   b. State your objections to the allowance of the claim in that amount.

3. Where objections have been filed, if I consider them to be without merit, I shall apply to the Director for an Order allowing your claim in the principal amount stated, plus interest, and dismissing any portion over and above that amount.

4. If, within thirty days, you do not submit the original certificates of deposit or an explanation as to why you cannot forward them, I shall conclude that the claim has been abandoned and shall apply to the Director for an Order dismissing the claim on that ground.

5. If you prefer to utilize the funds in Japan, you should sign and mail the enclosed Notice of Withdrawal card in order to clear the records of this Office.

Sincerely yours,

Arthur R. Schor,
Chief, Claims Section,
Office of Alien Property.

Enclosures

TITLE 8—ALIENS AND NATIONALITY

CHAPTER II—OFFICE OF ALIEN PROPERTY, DEPARTMENT OF JUSTICE PART 502—RULES OF PROCEDURE FOR CLAIMS UNDER THE TRADING WITH THE ENEMY ACT.

Section 502.25—MOTION TO DISMISS.

Paragraph (i) of Section 502.25 of the Rules provides:

> Notwithstanding the provisions of this section the Chief of the Claims Section may serve a notice upon the claimant that, after the expiration of a time fixed in the notice, which time shall not be less than thirty (30) days, he intends to apply to the Director for an order dismissing the claim. The notice shall state the grounds for dismissal and the claimant may, within the time indicated in the notice, file a statement specifying his objections to dismissal, together with his reasons in support thereof; any evidence or other material in support of the claim which has not previously been filed with this Office shall be filed by the claimant with the statement of objections. Upon application by the Chief of the Claims Section for an Order dismissing the claim, the Director will consider the objections if any which may have been filed. The Director thereafter may remand the application to the Chief of the Claims Section for further proceeding under these rules, or in the case of *non-excepted claims* if it appears to him that there is no genuine issue may issue an order dismissing the claim. In cases of *excepted claims* where the Director is of the opinion there is no genuine issue he shall transmit the record together with any objections which have been filed to the dismissal of the claim to the Attorney General, and upon approval by the Attorney General, the Director shall enter an order dismissing the claim. (21 F.R. 1582, March 1, 1956)

§ 502.2(h) provides: "The terms 'excepted claim' means (1) any title claim which involves the return of assets

having a value of $50,000 or more and any debt claim in the amount of $50,000 or more; * * * *" and

§ 502.2(i) provides: "The term 'non-excepted claim' shall mean any claim other than an 'excepted claim'." (21 F. R. 1580, March 14, 1956)

NOTICE OF WITHDRAWAL

Claim No. 30417 Date.
Claimant Mrs. Masae Kondo
Debtor SUMITOMO BANK, LTD.

(I hereby withdraw the above claim)

_____

(claimant)

by _____ _____

EXHIBIT H

3619½ Bellevue Avenue
Los Angeles 26, California
27 February 1958

Claim No. 30417

Department of Justice,
Office of Alien Property,
Washington 25, D.C.

In re: ABD:DRW:hhl

Gentlemen:

I am in receipt of your letter of February 3, 1958 concerning my Sumitomo Bank claim.

Per your request, I transmit herewith certificate numbers 12490, 17314, 17315, 17375, 17685 and 17741.

I decline to amend my claim to the amount stated in your letter ($14.00) as I believe the amount is grossly unfair.

My objections are that I believe I am entitled to the return of the actual dollars which the Government seized. I do not know legal terms and whether this should be phrased in terms of rate of exchange except that it seems to me that when the Government took a certain amount of money that did not belong to it but belonged to other people that the people who owned the money should be paid back that amount.

Sincerely yours,

MRS. MASAE KONDO.

Enclosures

Filed September 4, 1964

ANSWER

Defendant, for his answer to the Complaint:

I. Denies each and every allegation of paragraph 1 of the complaint.

II. Denies the allegation of paragraph 2 of the complaint that plaintiffs' certificates of deposit were redeemable upon demand in dollars at the offices of the Yokohama Specie Bank Ltd. in the United States, but except as thus expressly denied, admits the allegations of paragraph 2 of the complaint.

III. Denies the allegation of paragraph 3 of the complaint that the vested property of the Yokohama Specie Bank Ltd. in the United States included funds that the plaintiff had on deposit there but except as thus expressly denied admits the allegations of paragraph 3 of the complaint.

IV. Admits the allegations of paragraph 4 of the complaint.

V. Denies any knowledge or information sufficient to form a belief as to each and every allegation of paragraph 5 of the complaint.

VI. Denies any knowledge or information sufficient to form a belief as to each and every allegation of paragraph 6 of the complaint.

VII. Denies any knowledge or information sufficient to form a belief as to each and every allegation of paragraph 7 of the complaint.

VIII. Denies each and every allegation of paragraph 8 of the complaint.

IX. Admits the allegations of paragraph 9 of the complaint.

X. Denies any knowledge or information sufficient to form a belief as to each and every allegation of paragraph 10 of the complaint.

XI. Denies each and every allegation of paragraph 11 of the complaint.

XII. Denies any knowledge or information sufficient to form a belief as to each and every allegation of paragraph 12 of the complaint.

WHEREFORE, defendant demands judgment dismissing the plaintiff's Complaint.

JOHN W. DOUGLAS,
Assistant Attorney General,
Civil Division.

ANTHONY L. MONDELLO,
ARMAND B. DUBOIS,
Attorneys for Defendant,
Department of Justice,
Office of Alien Property.

Filed December 29, 1964

DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

Defendant moves to dismiss the complaint on the ground that the Court lacks jurisdiction over the subject matter of this action because it was not commenced within the time set forth in Section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f)).

JOHN W. DOUGLAS,
Assistant Attorney General.

ANTHONY L. MONDELLO,
ARMAND B. DUBOIS,
Attorneys for Defendant.

UNITED STATES OF AMERICA
Department of Justice
Office of Alien Property
Washington, D. C.

Debt Claim No. 30418

In the Matter of: MASAE KONDO (Insolvent Estate of the Yokohama Specie Bank Ltd., alleged debtor, V.O. Nos. 1501, et al.)

ORDER DISMISSING DEBT CLAIM
(Abandonment)

Pursuant to section 502.25(i) of the Rules of Procedure for Claims of this Office (8 CFR 502.25(i)), the Chief of the Claims Section by letter dated November 28, 1958, notified the claimant by registered mail, return receipt requested, that unless necessary information for the processing of the claim under section 34 of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34), was received within forty-five days from the date of said letter, he would apply to the Director for an Order dismissing the claim on the ground of abandonment. A copy of section 502.25(g) and(i) of the Rules of Procedure for Claims was enclosed with the letter, setting forth the claimant's right to object to the proposed dismissal. The aforementioned letter of notification from the Claims Section was returned to this Office by the postal authorities bearing the notation stamp: "Unknown"

Upon the application of the Chief of the Claims Section and finding that the said claim has been abandoned;

IT IS ORDERED that this claim be and it is hereby dismissed and disallowed. It should be noted that the aggregate of debt claims filed against the Yokohama Specie Bank, Ltd., exceeds the money from which payment may be made by this Office and that any further proceedings

are governed by section 34(f) of the Trading with the Enemy Act, as amended.

Dated at Washington, D.C.

(Signed) PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

January 22, 1959.

DEPARTMENT OF JUSTICE
Office of Alien Property
Washington 25, D.C.

Claim No. 30418
DGMcG:ABD.lhm

REGISTERED MAIL 784651
CLAIMANT: Mrs. Masae Kondo,
3619 ½ Bellevue Avenue,
Los Angeles 26, California.

NOTICE

Attached is a copy of a Final Schedule issued under Section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34), in respect of the Yokohama Specie Bank, Ltd., an insolvent debtor, listing the claims in respect of said debtor allowed as priority (3) claims and as non-priority claims and the payments to be made thereon. If your claim is not shown on the schedule, it is for the reason that the claim has been dismissed and disallowed by this Office.

This schedule is being served by registered mail on all claimants listed therein, as well as on claimants whose claims have been dismissed and disallowed. Pursuant to Section 34(f) of the Trading with the Enemy Act, as amended, any claimant considering himself aggrieved by this Final Schedule may, within sixty (60) days from the date of the mailing of the Schedule, file in the United States District Court for the District of Columbia a complaint for review of this Schedule, naming the Attorney General as defendant. A copy of such complaint must be served on the Attorney General and on each claimant named in the Schedule. If no such complaint for review is filed within the sixty-day period, payments to claimants will be made by this Office as specified in the Fnal Schedule.

PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

Date: September 8, 1951

Enclosure

Filed December 29, 1964

AFFIDAVIT

Julian M. Hare, being duly sworn, deposes and says:

1. I am the duly appointed Records Officer of the Office of Alien Property, Department of Justice, and as such I have custody of all the files and records relating to the operation of the Office.

2. I have caused a diligent search to be made of the records and files in my custody and find that a copy of the Yokohama Specie Bank Ltd. Final Schedule was mailed to Mrs. Masae Kondo on September 8, 1961, to 3619½ Bellevue Avenue, Los Angeles 26, California, in connection with her Claim No. 30418, and that said copy was not returned to this Office.

JULIAN M. HARE.

Sworn to before me this 20th day of November 1964.

DONNA A. COWDEN,
Notary Public, District of Columbia.

My Commission expires September 30, 1966.

Filed March 31, 1965, Harry M. Hull, Clerk

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1630-64

MASAE KONDO, ET AL., *Plaintiffs*,

v.

NICHOLAS DEB. KATZENBACH, Attorney General of the United States, *Defendant*

ORDER

Defendant's motion to dismiss having come on for hearing and the Court having considered the memoranda in support thereof and in opposition thereto, having heard argument of counsel, and having concluded that the Court lacks jurisdiction over the subject matter of this action because it was not commenced within the time set forth in Section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f), it is this 31st day of March, 1965

ORDERED that plaintiffs' complaint be and the same is hereby dismissed.

WILLIAM B. JONES,
Judge.

Filed April 2, 1965

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil No. 1630-64

MASAE KONDO, ET AL., *Plaintiffs*,

vs.

NICHOLAS KATZENBACH, *Defendant*

NOTICE OF APPEAL

Notice is hereby given this 2 day of April, 1965, that plaintiffs hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 31 day of March, 1965 in favor of Defendant, against said Plaintiffs.

JOHN SILARD,
Attorney for Plaintiffs,
1625 K St., N.W., D.C.

MASARU OKAMOTO

No. 19,283

Filed July 6, 1964

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1591-'64

MASARU OKAMOTO, 4243 Virginia Ave., Los Angeles 29, California; JAMES KOTARO SAKAKURA, 4021 S. Van Ness, Los Angeles 62, California; EIZO MORITA, 14011 S. Budlong, Gardena, California; HARUMATZU HINO, 1661 Casitas Avenue, Pasadena, California, *Plaintiffs*,

v.

ROBERT F. KENNEDY, Attorney General of the United States, Department of Justice Building, Washington 25, D.C., *Defendant.*

COMPLAINT FOR DECLARATORY AND OTHER RELIEF

1. This Court has jurisdiction under 5 USC 1009, 28 USC 1331, 1357 and 2201, and 50 USC Appx. 34f, as amended.

2. Defendant, Robert F. Kennedy, is the Attorney General of the United States. He is the successor in office to the Alien Property Custodian who, in 1943, pursuant to the Trading with the Enemy Act as amended (50 USC Appx. 1 et seq.) vested properties of the Yokohama Specie Bank, Ltd., including the funds plaintiffs had on deposit therewith. Unless otherwise stated, the term defendant will be used hereinafter to refer to the named defendant and/or his predecessors in office of the Office of Alien Property and their agents, as the context may require.

3. Plaintiffs file this suit on behalf of themselves and on behalf of all persons similarly situated, too numerous to bring before this Court, namely persons born in Japan, residents of the United States, who had deposits in the United States with the said Yokohama Specie Bank, Ltd., who, following said vesting by defendant, filed timely claims with defendant pursuant to 40 USC Appx. 34, whose claims were disallowed by defendant on the ground that plaintiffs

were ineligible for the return of their money under section 34a of the Trading with the Enemy Act (50 USC Appx. 34a) because they had been interned and paroled as enemy aliens pursuant to the Alien Enemy Act (50 USC 21) and who, when permitted by law became United States citizens.

4. Said determination by defendant that plaintiffs were ineligible for the return of their money seized by defendant was and is erroneous and contrary to law for the reason that said 50 USC Appx. 34a and 50 USC 21 do not and did not apply to plaintiffs, in that they were precluded solely by reason of their race and place of birth from becoming, although they desired so to do, and were in all other respects fully qualified to become, citizens of the United States. Further, if held to apply to plaintiffs, said 50 USC Appx. 34a is unconstitutional, as applied, to prevent plaintiffs from recovering their money, because in violation of the due process clause of the Fifth Amendment to the United States Constitution, in that it effectuates discrimination against the plaintiffs because of their race because plaintiffs were prevented from becoming United States citizens solely because Congressional statutory provisions prevented them from becoming United States citizens because of their race.

WHEREFORE, plaintiffs pray for judgment declaring that they were not ineligible debt claimants under 50 USC Appx. 34a and that their claims should be recognized by defendant as valid debt claims and paid as such at the *rate* of 23.4¢ per yen or, in the alternative, at the same rate paid to claimants in *Abe* v. *Kennedy*, Civil Action No. 2529-61 in this Court, and for such other and further relief as to the Court shall seem just and proper.

JOSEPH L. RAUH, JR.,
JOHN SILARD,
1625 K Street, N.W.,
Washington 6, D.C.

A. L. WIRIN,
FRED OKRAND,
257 South Spring Street,
Los Angeles 12, California,
Attorneys for Plaintiffs.

Filed September 4, 1964

ANSWER

Defendant, for his answer to the Complaint:

I. Denies each and every allegation of paragraph 1 of the complaint.

II. Denies the allegation of paragraph 2 of the complaint that the vested property of the Yokohama Specie Bank Ltd. in the United States included funds that the plaintiffs had on deposit there but except as thus expressly denied admits the allegations of paragraph 2 of the complaint.

III. Admits the allegations of paragraph 3 of the complaint.

IV. Denies each and every allegation of paragraph 4 of the complaint.

WHEREFORE, defendant demands judgment dismissing the plaintiff's complaint.

JOHN W. DOUGLAS,
Assistant Attorney General,
Civil Division.
ANTHONY L. MONDELLO,
ARMAND B. DUBOIS.
Attorneys for Defendant,
Department of Justice,
Office of Alien Property.

Filed September 29, 1964

DEFENDANT'S MOTION TO DISMISS THE COMPLAINT

Defendant moves to dismiss the complaint on the ground that the Court lacks jurisdiction over the subject matter of this action because it was not commenced within the time set forth in Section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f)).

(s) JOHN W. DOUGLAS,
Assistant Attorney General.
(s) ANTHONY L. MONDELLO,
(s) ARMAND B. DUBOIS,
Attorneys for Defendant.

ABD:DRW:mlg
Claim No. 29336

REGISTERED MAIL 784488
RETURN RECEIPT REQUESTED

November 26, 1958.

Masaru Okamoto,
4243 Virginia Avenue,
Los Angeles 29, California.

Dear Sir:

This is with reference to the above-numbered debt claim filed under section 34 of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34), against the insolvent estate of the Yokohama Specie Bank, Ltd.

Under section 34(a) of the Trading with the Enemy Act (50 U.S.C. App. 34(a)), persons who were paroled or interned under the Alien Enemy Act (50 U.S.C. 21), are not eligible as debt claimants. It appears that you were interned under the Alien Enemy Act by Order of the Attorney General dated July 31, 1942, and paroled by Order dated May 20, 1944. Consequently, you are not an eligible debt claimant and no favorable action with respect to your claim is possible by this Office.

It is, therefore, requested that you cancel the claim by signing and mailing the attached Notice of Cancellation of Claim card. In the event that the claim is not canceled within 45 days from the date of this letter, I intend to apply to the Director for the entry, without further notice to you, of an Order of Dismissal on the ground of ineligibility, pursuant to section 502.25(i) of the Rules of Procedure for Claims, a copy of which is enclosed.

Within the 45-day period, you may file with this Office a statement specifying the objections, if any, to the dismissal of the claim, together with the reasons in support thereof, and any evidence in support of the claim which has not previously been filed with this Office shall be filed with the statement of objections. Upon my application for an Order dismissing the claim the Director will consider any objections filed and may enter an Order either dismissing the

claim or remanding it to the Claims Section for further proceedings.

It should be noted that dismissal or cancellation of the claim filed with this Office will not affect the liability of the Bank in Japan on the certificate of deposit. You may wish to communicate directly with the Bank concerning this matter.

Very truly yours,

(Signed) ARTHUR R. SCHOR,
Chief, Claims Section,
Office of Alien Property.

Enclosures

cc: Thomas H. Carolan

UNITED STATES OF AMERICA
Department of Justice
Office of Alien Property
Washington, D. C.

Debt Claim No. 29336

In the Matter of: MASARU OKAMOTO (Insolvent Estate of the Yokohama Specie Bank, Ltd., alleged debtor, V.O. Nos. 1501, et al.)

ORDER DISMISSING DEBT CLAIM
(Ineligibility of Claimant)

Pursuant to section 502.25(i) of the Rules of Procedure for Claims of this Office (8 CFR 502.25(i)), the Chief of the Claims Section on November 26, 1958, notified the claimant by registered mail that after the expiration of 45 days he would apply to the Director for an Order dismissing the claim on the ground that the claimant, Masaru Okamoto, was not an eligible debt claimant under section 34(a) of the Trading with the Enemy Act, as amended, since he was interned and paroled under the Alien Enemy Act (50 U.S.C. 21), and that it was the opinion of the Chief of the Claims Section that no favorable action with respect to the claim was possible under section 34 of the Trading with the Eenemy Act, as amended (50 U.S.C. App. 34). The claimant was further advised that he might within the 45 day period file a statement specifying his objections to the proposed dismissal, together with his reasons in support thereof and that any evidence or other material in support of the claim which had not previously been filed with this Office should be filed with the statement of objections. The claimant has filed a timely statement of objections.

Upon the application of the Chief of the Claims Section and after considering the objections filed by the claimant and finding that no genuine issue is raised thereby and that the above-named claimant is not eligible to maintain a debt claim:

IT IS ORDERED that this claim be and it is hereby dismissed and disallowed. It should be noted that the aggregate of debt claims filed against the Yokohama Specie Bank, Ltd., exceeds the money from which payment may be made by this Office and that any further proceedings are governed by section 34(f) of the Trading with the Enemy Act, as amended.

Dated at Washington, D. C. 10 February 1959.

(signed) PAUL V. MYRON.
Deputy Director,
Office of Alien Property.

DEPARTMENT OF JUSTICE
Office of Alien Property
Washington 25, D.C.

Claim No. 29336
ABD:mw

REGISTERED MAIL 784490
CLAIMANT: Masaru Okamoto,
4243 Virginia Avenue,
Los Angeles 29, California.

NOTICE

Attached is a copy of a Final Schedule issued under Section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34), in respect of the Yokohama Specie Bank, Ltd., an insolvent debtor, listing the claims in respect of said debtor allowed as priority (3) claims and as non-priority claims and the payments to be made thereon. If your claim is not shown on the Schedule, it is for the reason that the claim has been dismissed and disallowed by this Office.

This Schedule is being served by registered mail on all claimants listed therein, as well as on claimants whose claims have been dismissed and disallowed. Pursuant to Section 34(f) of the Trading with the Enemy Act, as amended, any claimant considering himself aggrieved by this Final Schedule may, within sixty (60) days from the date of the mailing of the Schedule, file in the United States District Court for the District of Columbia a complaint for review of this Schedule, naming the Attorney General as defendant. A copy of such complaint must be served on the Attorney General and on each claimant named in the Schedule. If no such complaint for review is filed within the sixty-day period, payments to claimants will be made by this Office as specified in the Final Schedule.

Date: September 8, 1961.

PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

Enclosure

Filed March 31, 1965, Harry M. Hull, Clerk

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1591-64

MASARU OKAMOTO, ET AL., *Plaintiffs*,

v.

NICHOLAS DEB. KATZENBACH, Attorney General of the United States, *Defendant*.

ORDER

Defendant's motion to dismiss having come on for hearing and the Court having considered the memoranda in support thereof and in opposition thereto, having heard argument of counsel, and having concluded that the Court lacks jurisdiction over the subject matter of this action because it was not commenced within the time set forth in Section 34(f) of the Trading with the Enemy Act, as amended (50 U.S.C. App. 34(f), it is this 31st day of March, 1965

ORDERED that plaintiffs' complaint be and the same is hereby dismissed.

WILLIAM B. JONES,
Judge.

Filed April 2, 1965

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil No. 1591-64

MASARU OKAMOTO ET AL, *Plaintiffs*,

vs.

NICHOLAS DEB. KATZENBACH, *Defendant*.

NOTICE OF APPEAL

Notice is hereby given this 2nd day of April, 1965, that plaintiffs hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 31st day of March, 1965, in favor of Defendant against said Plaintiffs.

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(4992-4)

BRIEF FOR APPELLANTS

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 19,284

AYAKO HONDA, ET AL., *Appellants,*

v.

NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL OF THE UNITED STATES, *Appellee.*

No. 19,282

MASAE KONDO, ET AL., *Appellants,*

v.

NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL OF THE UNITED STATES, *Appellee.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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STATEMENT OF QUESTION PRESENTED

The question presented is whether, notwithstanding the doctrine of sovereign immunity, the principle of equitable estoppel against time limitations on suit established in *Glus* v. *Brooklyn Eastern District Terminal,* 359 U.S. 231, is available against the United States in suits under the Trading With The Enemy Act.

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Authorities Cited

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BRIEF FOR APPELLANTS

Jurisdictional Statement

These are suits brought in the United States District Court below under Section 34(f) of the Trading With The Enemy Act (50 U.S.C. App. 34(f)). The District Court on

March 31, 1965, dismissed the actions for lack of jurisdiction because of the 60-day statute of limitations proviso of Section 34(f). Notice of appeal was filed on April 2, 1965. This Court has jurisdiction of these appeals under 28 U.S.C. 1291.

Statement of the Case

This is a suit brought under 50 U.S.C. App. 34(f) by thousands of American citizens of Japanese ancestry claiming a return of their yen deposit accounts in the Yokohama Specie Bank whose assets were seized by the Alien Property Custodian on Pearl Harbor Day.[1] Following plaintiffs' (appellants') filing of timely debt claims under the Trading With The Enemy Act, the Government in 1958 recognized the validity of their claims. But the Government offered to pay plaintiffs only two cents on the dollar (applying the post-war yen-dollar conversion ratio) and it instructed them to mail in their original deposit certificates if they desired payment on that basis.

About 1,800 of the 7,500 Yokohama Specie Bank depositors who received this letter offer from the Government in 1958, sent in their original deposit certificates, and appeared on the Yokohama Specie Bank payment schedule published in 1961 by the Office of Alien Property. That schedule was challenged within sixty days on the question of the applicable yen-dollar conversion ratio by the suit in the District Court in *Abe* v. *Kennedy*, Civ. A. 2529-61. However, a majority of the recipients of the 1958 offer—those

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[1] While separate suits and appeals were filed below in the *Honda* and *Kondo* cases, plaintiffs in *Kondo*, with the single exception noted hereafter (*infra* p. 13, n. 2), are in precisely the same position as and are members of the same class as plaintiffs in *Honda*. Since, with the one exception to be noted, the facts of the two suits are the same and the same arguments apply, in this brief we refer to "plaintiffs" and to the suit below interchangeably, and denote thereby both of the suits and all of the plaintiffs in the two cases.

comprising the class of plaintiffs in this suit—did not send in their original certificates pursuant to the 1958 offer of return. Unlike those who did, they did not appear on the 1961 OAP schedule, and were accordingly not technically within the class of plaintiffs in *Abe*.

In *Aratani* v. *Kennedy*, 115 App. D.C. 97, 317 F. 2d 161, a companion to the *Abe* case, this Court upheld the Government's application of the post-war yen-dollar conversion ratio to yen accounts seized on Pearl Harbor Day. But following the grant of certiorari by the Supreme Court (375 U.S. 877), the Government entered into a multi-million dollar settlement with the plaintiffs in *Aratani* and *Abe*, which the Supreme Court referred to the District Court for approval (376 U.S. 936). That settlement, finally approved in 1964, represented a distribution to each *Abe* claimant of about one hundred percent of his Yokohama Specie Bank yen account, at the pre-war yen-dollar ratio, but without interest.

In 1964, upon learning of the *Aratani-Abe* settlement, the present plaintiffs who had awaited the resolution of that litigation and expected to be given the benefit of a successful outcome thereof, asked the Office of Alien Property to honor their claims on the same basis (100% of principal, without interest) on which it had paid the claimants in the test cases. The present plaintiffs pointed out that the Government has long recognized the validity of their debt claims, that seized Yokohama Specie Bank assets in the possession of the Government are adequate to afford them the same return given the *Abe-Aratani* plaintiffs, and that fundamental justice requires equal treatment to all similarly situated depositors. The Government, however, though it concedes the power to make a return to these claimants in the same manner as to the *Abe* and *Aratani* plaintiffs, has declined to do so. Following its

refusal and the filing of this action, it has successfully resisted the jurisdiction of the District Court to entertain the suit, on the technical ground that the plaintiffs did not, as they might have done, file a test suit in 1961 within 60 days after the Yokohama Specie Bank schedule was published.

Plaintiffs' principal argument below in favor of jurisdiction was that, under the particular circumstances here presented, the Government should be estopped from pleading the 60-day limitation period of the Act. In that regard the Government concedes the general power of the District Court to apply estoppel against limitations under the recent Supreme Court decision in *Glus* v. *Brooklyn Eastern District Terminal,* 359 U.S. 231. But it urges that the doctrine of sovereign immunity precludes the application of the *Glus* principle in suits against the United States. The District Court during oral argument manifested its sympathetic acceptance of the equities justifying plaintiffs' delay between 1961 and 1964 in filing their action while the test litigation was pending, but it indicated serious doubt whether sovereign immunity permits application of the *Glus* doctrine to a suit against the Government. The ultimate order of the Court (J.A. 36, 66) dismissing the actions for lack of jurisdiction reflects the Court's determination that the doctrine of sovereign immunity precludes estoppel against limitations in statutory suits for compensation brought against the United States.

Whether that ruling is correct is the central issue presented on this appeal for the Court's solution. In the Argument (Point I) we first set forth the particular circumstances here requiring an estoppel, and then (Point II) the authorities demonstrating that estoppel is available against federal statutes of limitations, (Point III) that notwithstanding sovereign immunity the *Glus* doctrine

applies to suits against the United States, and (Point IV) that a serious constitutional issue arises under the Fifth Amendment if in actions testing the seizure of private property Congress is deemed to have immunized the Government from application of equitable estoppel.

Statute Involved

Section 34(f) of the Trading With The Enemy Act, 50 U.S.C. App. 34(f), provides:

> "If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule, the Custodian shall assign priorities in accordance with the provisions of subsection (g) hereof. Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Custodian as defendant. A copy of such complaint shall be served upon the Custodian and on each claimant named in the schedule. The Custodian, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, any findings or

other determinations made by the Custodian with respect thereto, and the schedule prepared by the Custodian. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian or could not reasonably have been adduced before him or was not available to him. Any interested debt claimant who has filed a claim with the Custodian pursuant to this section, upon timely application to the court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying the schedule as prepared by the Custodian and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of the money from which, in accordance with subsection (d) hereof, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review."

Statement of Points

Equitable estoppel against limitations (*Glus* v. *Brooklyn Eastern District Terminal*, 359 U.S. 231) applies to suits against the United States and therefore the District Court erred in holding itself without jurisdiction to entertain this suit brought after the 60 day limitation period of Section 34(f) of the Trading With The Enemy Act.

Summary of Argument

The District Court Should Have Invoked Equitable Estoppel Against Limitations, Which Applies to Alien Property Suits Against the United States Under Section 34(f) Notwithstanding the Sovereign Immunity Doctrine.

1. Traditional grounds are here presented for an equitable estoppel against the 60-day limitations period of the statute. Plaintiffs are virtually identically situated with the class of plaintiffs in *Abe* v. *Kennedy* (Civ. Action 2529-61)—fellow depositors in the Yokohama Specie Bank who filed suit in the court below in 1961 to challenge the O.A.P.'s Final Schedule of Yokohama Specie Bank claims. Plaintiffs in the present actions differ from the *Abe* litigants only in that they declined to comply with the Government's misleading, insulting and arbitrary demand in 1958 for surrender of their original Yokohama Specie Bank deposit certificates, because of which the O.A.P. failed to include them on its 1961 Schedule. Moreover, plaintiffs reasonably relied upon the Government—which had recognized the validity of their claims—to grant them equal treatment with their fellow-claimants in *Abe*. Finally, no prejudice whatever has resulted from delay in suit from 1961 to 1964 while *Abe* was pending, since the fund to which plaintiffs look for return of their savings accounts was simply dormant in the Government's possession during these years as it had been since the seizure on Pearl Harbor day.

2. The estoppel doctrine established by *Glus* v. *Brooklyn Eastern District Terminal,* 359 U.S. 231, is applicable to suits under the Trading With The Enemy Act no less than other federal statutes. In *Glus* the Supreme Court approved and applied fundamental equitable considerations excusing a delay in suit past the statutory period. The

Court particularly emphasized that when a defendant has so acted that the plaintiff is "justifiably misled into a good-faith belief" that he may delay in filing his action, the statute of limitations must give way to basic equity norms.

3. Nothing in the sovereign immunity doctrine warrants an implied exemption for the Government under the Trading With The Enemy Act from the estoppel principle of *Glus*. In the absence of some manifest legislative history or purpose, and none is presented here, courts will not lightly read limitations into Congressional enactments. Indeed, in a series of Tort Claims Act cases culminating in *United States* v. *Muniz*, 374 U.S. 150, the Supreme Court has rejected implied exemptions based on sovereign immunity because "We should not, at the same time that state courts are striving to mitigate the hardships caused by sovereign immunity, narrow the remedies provided by Congress". And the Government's argument that estoppel here would expand the judicial jurisdiction Congress has conferred, is answered by *United States* v. *Price-McNemar Construction Co.*, 320 F. 2d 663, where the Ninth Circuit pointed out that in *Glus* itself the Supreme Court has rejected that argument. Finally, this Court has ruled (*Vestal* v. *Commissioner*, 80 App. D.C. 264, 152 F. 2d 132, 136) that "estoppel must be applied with great caution to the Government and its officials. But in proper circumstances it does apply", and has recently invoked estoppel against the six year statute of limitations pleaded by the Government in *N. V. Philips'* v. *A.E.C.*, 114 App. D.C. 400, 316 F. 2d 401. That decision, controlling here, emphasizes that in cases of Government taking of property, courts must avoid rigorous application of limitations resulting in unfairness to the citizen whose property has been taken.

4. Exemption of the Government from the *Glus* estoppel

doctrine also presents a serious constitutional issue under the just compensation provision of the Fifth Amendment. Summary alien property seizure has been upheld by the Supreme Court, but only "if adequate provision is made for a return in case of mistake". *Central Union Trust Co.* v. *Garvan*, 254 U.S. 554, 566. If the Government is correct that Congress has under this Act imposed an unprecedented 60-day statute of limitations which applies no matter how unjust or unfair may be its application, then Congress has not made the "adequate provision" for a return which is required by *Garvan* and the Fifth Amendment.

ARGUMENT

The District Court Should Have Invoked Equitable Estoppel Against Limitations, Which Applies to Alien Property Suits Against the United States Under Section 34(f) Notwithstanding the Sovereign Immunity Doctrine.

The principal question presented for this Court's determination is whether, consistent with sovereign immunity, the principle of estoppel against statutes of limitations, confirmed in *Glus* v. *Brooklyn Eastern District Terminal*, 359 U.S. 231, can be invoked in a suit against the Government under the Trading With The Enemy Act. In our Argument we demonstrate that (I) traditional grounds are presented for an estoppel in this case, (II) the Supreme Court's decision in *Glus* has firmly established the applicability of estoppel against limitations in actions under federal statutes, (III) sovereign immunity does not bar application of the *Glus* principle in a suit against the Government under the Trading With The Enemy Act, and (IV) a serious constitutional question under the just compensation guarantee of the Fifth Amendment arises from a reading of the Act which absolves the Government from the equit-

able estoppel principle generally applicable in federal litigation.

I

Traditional Grounds Are Here Presented for an Equitable Estoppel

Plaintiffs are thousands of residents and citizens of the United States, persons of Japanese ancestry, who in 1941 had individual yen deposit accounts in the California Branch of the Yokohoma Specie Bank, Ltd. Their yen certificates, issued in the United States in exchange for dollar deposits, were redeemable in dollars at the Bank in the United States or in yen at the Bank offices in Japan (J. A. 1).

On December 7, 1941, the Government seized the assets of the Yokohoma Specie Bank in California as enemy property and in 1943 those assets, including the funds plaintiffs had on deposit, were "vested" pursuant to Section 34 of the Trading With the Enemy Act. During the war, most of the plaintiffs were evacuated from California to work as farm laborers. Illustrative is the case of plaintiff Michiko A. Terao, whose affidavit discloses (J. A. 15) that although she was the wife of a member of the United States Army who was wounded in battle, awarded the Purple Heart, and became permanently paralyzed by his battle injuries, during the war she was evacuated to Colorado with minimum personal belongings to work as a sharecropper.

After the war, some 7,500 yen deposit holders in the Yokohoma Specie Bank, including plaintiffs herein, filed timely debt claims under Section 34 of the Trading With The Enemy Act, based upon their 1941 deposit accounts in the Yokohama Specie Bank (J. A. 2, 25). Thereafter, about

ten years passed before the Government made its determination on their claims. During these years, the test case in the Department of Justice on these claims was that of Kunio Abe, Claim No. 55507. Therein, a Hearing Examiner ruled on January 31, 1957, that the Yokohama Specie Bank yen deposit claims were to be honored by the Custodian at the pre-Pearl Harbor yen-dollar conversion ratio of approximately four yen to the dollar. However, in 1957 the Director of the OAP, with the approval of the Attorney General, overruled the examiner, and held that the proper payment formula was the post-war conversion ratio of 361 yen to the dollar, or approximately *two percent of the actual value* of these deposit accounts when they were seized by the Government on Pearl Harbor day (J. A. 2).

Following that determination, in 1958 identical or very similar letters were sent to about 7,500 Yokohama Specie Bank claimants, wherein the Government recognized the validity of each applicant's claim but offered to pay only at the post-war ratio of 361.55 yen per dollar. See J. A. 6, 52. For a great number of the claimants, whose deposit accounts were modest, this 1958 offer of return actually was a proposal to pay only a few dollars or even pennies—frequently less than what it had cost the claimant to file his original claim with an authenticated copy of the yen deposit certificate. See J. A. 12, 13, 16.

The discouragement and insult which inhered in the two percent offer to thousands of honorable Americans who had waited seventeen years for the money their Government had seized, is obvious. And to it there was also added in the 1958 letter the gratuitous and arbitrary demand of the Government for the surrender of the claimants' original deposit certificates. Even cursory reading of that letter (J. A. 6, 52) demonstrates the confusion, insult and arbi-

trariness of the Government's peremptory demand for surrender of the original deposit certificate:

(1) The 1958 letter nowhere explained why the certificate surrender was being demanded. Seventeen years had then passed since the seizure of the claimants' bank deposits in California; ten years earlier each claimant had filed a certified claim, usually by photostatic copy of the yen deposit certificate, and no question about the authenticity of the yen deposit claim was being raised. Moreover, the Government was not even in 1958 offering actually to make payment, but merely advised each claimant that at some undetermined future time a schedule would be published of accepted claims, long before any payments could be made.

(2) The demand for the original certificates was made in conjunction with a discouraging and insulting offer to return the claimants' seized bank accounts at two percent of value, years after their seizure occasioned by no act of the claimants but only because of the state of war between the United States and Japan.

(3) The offer to the claimants was utterly confusing on the question whether the original certificates were being demanded only from those who would accept the two percent return or also those who rejected it. Whatever may have been intended on this score, the failure to explain in the 1958 letter the Government's need for the original deposit certificates, coupled with the confusing attempted explication of litigation rights with respect to the two percent return offer, led to the natural inference by the reader that a surrender of the original deposit certificate would or might constitute acquiescence in the two percent formula, and thus waive further rights of the claimant.

The recipients of the 1958 letter were naturally reluctant to surrender their original deposit certificates. Thus, of

the approximately seven thousand recipients of the letter, only about 1,800 sent in their original deposit certificates as requested; fewer than 1,600 returned a withdrawal card attached to the letter indicating that they were withdrawing their claim; and the remainder—the majority—neither withdrew their claims nor sent in their original certificates. These latter claimants, plaintiffs in this action, feared to surrender their original certificates constituting their last tangible evidence of claim, reasonably believed that such surrender would constitute acquiescence in a two percent return, and because of illiteracy, poor command of English and similar reasons many simply did not understand the complex 1958 letter from the Government (J. A. 2, 3 and affidavit of Katsuma Mukaeda, President of the Japanese Chamber of Commerce of Southern California, J. A. 18).

In due course, after failure to transmit the original deposit certificate, a notice was sent to each plaintiff advising that his claim was dismissed and that under the Act he had no judicial recourse until after future publication of the Alien Property schedule of validated Yokohama Specie Bank claims.[2] Following the 1961 publication of

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[2] The first named plaintiff in *Kondo* # 19,282, differs from the class of plaintiffs in *Honda*, # 19,284, in that she received neither the 1958 letter from the Government requesting surrender of her original certificate nor the 1959 notice that her claim had been dismissed (J.A. 42). The reason for this was that the Government had mis-addressed those two communications (J.A. 47). Moreover, having failed to furnish the Government with a change of address notice, Mrs. Kondo also did not receive the 1961 Yokohama Bank schedule which was mailed to an address where she then no longer resided. Nevertheless, adhering to its statute of limitations argument to the point of *reductio ad absurdum*, the Government argues that if Mrs. Kondo had given notice of change of address she would have received the 1961 schedule which, *standing alone*, would have been adequate statutory notice to commence running of the sixty-day limitation of Section 34(f); accordingly it has refused to honor Mrs. Kondo's claim and those of others similarly situated. With respect to these claims it is the Government's remarkable position that,

that schedule, a suit was filed in the U.S. District Court for the District of Columbia challenging the two percent post-war conversion formula. *Abe* v. *Kennedy,* Civ. Action 2529-61. The suit was brought on behalf of all of the Yokohama Specie Bank claimants on the 1961 schedule, and the first named litigant was Kunio Abe whose claim had been the test case within the Justice Department for all of the claimants. Plaintiffs, however, did not understand the technical difference between claimants on the schedule and those dropped because of failure to send in their original certificates (J. A. 2, 18). Moreover, they reasonably anticipated that if the two percent formula which had long been in administrative litigation in *Abe* were reversed in the courts, all Yokohama Bank depositors who had filed timely claims under the Act which the Government had recognized as valid, would be similarly compensated.

That expectation has, however, been frustrated by the refusal of the Government to make return to the plaintiffs in accordance with what was ultimately given the *Abe* plaintiffs. After this Court in *Aratani* upheld the post-war conversion ratio, the Supreme Court granted certiorari (375 U.S. 877). Thereupon the Government settled *Abe* and *Aratani,* mooting the issue before the Supreme Court. The settlement gave each Yokohama Bank claimant slightly in excess of one hundred percent of his original deposit account, at the 4 to 1 yen-dollar ratio obtaining on Pearl Harbor day, but without interest (J. A. 3-4). Yet, when

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having seized the property of loyal Americans during war time, it may forever preclude its return twenty years later, even though the Government's own carelessness has deprived the claimant of receipt of notice that her claim had been dismissed. Such a grotesque result clearly is not equity, and we submit that it also cannot be the law without an utter distortion of the statute.

the Government was asked to make the same return to these claimants as to the *Abe-Aratani* plaintiffs, it refused to do so, though it has adequate Yokohama Specie Bank assets on hand to make the same return to all the claimants (J. A. 4) and has conceded the power to do so.[3]

Following the Government's refusal to award the benefit of the *Abe* return formula to these claimants, who had not transmitted their original deposit certificates in 1958, plaintiffs filed this action under Section 34 of the Trading With The Enemy Act (J. A. 1, 41). Defendant countered by pleading the sixty-day statute of limitations proviso of that Section. It urged in the court below that however reasonable plaintiffs' delay may have been during the three years when the *Abe* case was pending in the courts, the sixty days for suit expired in 1961 and the court below had no jurisdiction of the action. Plaintiffs' principal argument below was that the District Court has power to bar the Government's plea of limitations under the doctrine of equitable estoppel recently confirmed in *Glus* v. *Brooklyn Eastern District Terminal*, 359 U.S. 231. Plaintiffs urged that traditional grounds for an estoppel inhere in three considerations bearing upon their delay in filing suit:

1. It was pointed out that plaintiffs, who had awaited the outcome of the *Abe* case, differed from the plaintiffs in that case *only* in their failure to comply with the Government's wrongful demand: the misleading, insulting and

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[3] The Government's reason for refusal is not precisely clear. In the court below the Government recognized the equities favoring plaintiffs' case, and indicated to the District Court its willingness to support legislation authorizing the payment of their claims. But apparently, the Government is disinclined administratively to honor plaintiffs' claims despite these equities because of the further delay which the process of payment might cause in the long-sought liquidation of the Office of Alien Property —a petty answer to a just cause.

arbitrary 1958 demand for the surrender of original deposit certificates in connection with a legally inadequate offer of two percent return;

2. It was emphasized that plaintiffs were fully justified in declining to surrender their original deposit certificates in 1958, and that their failure to sue while *Abe* was in litigation was *excusable delay* in view of their reasonable reliance upon the Government to treat them equally with their fellow-claimants in *Abe*;

3. It was also urged there was *no prejudice* whatsoever from delay in suit between 1961 and 1964, since the fund to which plaintiffs look for return had simply been dormant in the possession of the Government just as it had been for the preceding twenty years.

Notwithstanding the strong equities presented, the District Court dismissed the action for lack of jurisdiction (J. A. 36, 66), accepting the Government's argument that, because of sovereign immunity, estoppel against limitations cannot apply under an act authorizing compensatory suits against the Government. But as we demonstrate in the remainder of our Argument, the principle of equitable estoppel against limitations has been made applicable by the Supreme Court to federal statutes creating and limiting causes of action, and is equally applicable—notwithstanding sovereign immunity—in civil suits under the Trading With The Enemy Act.

II

The Estoppel Doctrine of Glus v. Brooklyn Eastern District Terminal, 359 U.S. 231

The recent decision of the Supreme Court in *Glus* v. *Brooklyn Eastern District Terminal,* 359 U.S. 231, is a landmark holding on estoppel against statutes of limitations.

It reversed prior limiting authorities on this subject, and opened the door to fundamental equitable considerations in the assertion of estoppel against statutes of limitations. Previously, the only firmly recognized ground for failure to apply a statute of limitations was active fraud by the defendant. In *Glus*, however, the Supreme Court in sweeping terms made equitable considerations applicable to excuse delay in the filing of actions past the statutory period. The Court held that a plaintiff could excuse delay past the statutory period in filing an FELA suit, if he could prove that the defendant's agents "*conducted themselves in such a way that petitioner was justifiably misled into a good-faith belief*" that he could begin his action after the statutory period. The Court particularly emphasized the fundamental equitable maxim that "no man may take advantage of his own wrong", and that it would be improper to permit a defendant to plead the statute of limitations when he is implicated in plaintiff's failure (through ignorance or mistake) to file in time.

In the instant case the same consideration impels the same result. The OAP was from the first implicated in the chain of events leading to the *Abe* litigation and the failure of the present plaintiffs to file actions prior to the final judgment in that class action. In this respect it should be noted that (1) the OAP 1958 demand for original certificates from all Yokohama Specie Bank claimants was part of its erroneous and legally inadequate offer of two percent compensation; (2) plaintiffs were understandably discouraged, left ignorant and in some respects actively misled by the OAP letters purporting to explain, but not adequately explaining, the relationship between its demand for original certificates and the proposed compensation formula and rights of judicial review; (3) plaintiffs reasonably expected that the Government of the United States, having recog-

nized the validity of their claims, would thereafter extend to them the benefit of *Abe* since they differed from the *Abe* plaintiffs *only* in having declined to surrender their original certificates in connection with the 1958 offer of compensation.

Under all of these circumstances, it is clear that the Government is at least chargeable with concurrent, if not prime responsibility for the failure of plaintiffs to file suit while *Abe* was pending. For the OAP now to assert that the *Abe* plaintiffs were properly paid but that the majority of depositors—who differed only in retaining the original certificates evidencing their claims and awaiting the outcome of a test case—are *not* properly to be paid, would elevate meaningless technicality and form above substance, fairness and equity. We can not believe that the equities which invoked estoppel in a single FELA claim in *Glus*, fail to protect the majority of the holders of bank accounts seized in 1941 where the Government has recognized the validity of their claims and the money is at hand to make return to them in the same manner as to their brother claimants—particularly where they differ only in refusal to surrender their original certificates upon the Government's offer of a two percent return.

III

The Sovereign Immunity Argument

Notwithstanding the compelling equitable considerations pointing toward estoppel, the Government urges that because of the "consent to sue the sovereign" doctrine a statute of limitations "cannot be extended by waiver or estoppel" in actions against the United States. In thus arguing that Congress has *impliedly* precluded operation of the doctrine of estoppel against limitations in suits under

the Trading With The Enemy Act, the Government has a large burden to support. *First,* it must overcome the general principle that courts will not read restrictions into Congressional legislation in the absence of some manifest legislative history or purpose requiring interpolation of an exception into the Congressional scheme. *Second,* there is no slightest manifestation of a Congressional purpose to preclude estoppel in suits under this Act; on the contrary, it seems clear that when Congress generally authorized actions under this Act to be brought in the District Courts, it subjected such actions to the same rules—including equitable estoppel—applicable to other civil actions. *Third,* it is the Government's burden in importing an exemption for sovereign immunity into the act, to overcome recent emphatic rejections by the Supreme Court of similar sovereign immunity arguments made by the Government under the Federal Tort Claims Act. *Finally,* the thrust of the Government's plea for an implied limitation flies in the face of this Court's contrary premise as enunciated and applied in *N. V. Philips'* v. *A.E.C.*, 114 App. D.C. 400, 316 F. 2d 401.

(1) It is an established principle of statutory construction that courts will not lightly read limiting provisions into Congressional legislation. True, the plain meaning rule is sometimes disregarded to prevent a violation of the manifest legislative purpose, but the party who seeks alteration or restriction of the terms of the statute must advance some pertinent legislative history or purpose. See, generally, Sutherland, *Statutory Construction* (3rd ed.), §§ 4502, 4706.

(2) Nothing has been or can be cited from the legislative history or purpose of the Trading With The Enemy Act which would warrant a special exemption for the Government from the equitable estoppel principle applicable gen-

erally to civil litigation in the federal courts. Section 34(f) of the Act provides for civil suits in the District Court, to which normal principles of procedure and adjudication in civil actions necessarily apply. If Congress was not initially compelled to provide for such test litigation—a proposition which we deny in view of *Central Union Trust Co.* v. *Garvan,* 254 U.S. 554, *infra,* p. 25—the fact is that Congress *has* waived sovereign immunity by providing for civil test suits in alien property cases. The Government cannot now bring sovereign immunity back into the picture by reading limitations into the Act which are not there.[4] Cf. *United States* v. *Aetna Surety Co.,* 338 U.S. 366, 383.

(3) In *Indian Towing Co.* v. *United States,* 350 U.S. 61, *Rayonier* v. *United States,* 352 U.S. 315, and *United States* v. *Muniz,* 374 U.S. 150, the Supreme Court ruled on Government arguments asking for implied exemptions in the Tort Claims Act flowing from sovereign immunity. The exemptions were refused, and in its *Muniz* opinion (at 165) the Court rejected such exemptions in terms precisely applicable to the Government's present argument:

> "We should not, at the same time that state courts are striving to mitigate the hardships caused by sovereign immunity, narrow the remedies provided by Congress. As we said in *Rayonier* v. *United States,* 352 U.S. at 320, 'There is no justification for this Court to read

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[4] Actually we have more here than just the fact that nothing in the legislative purpose or history favors an implied exception from the equitable estoppel principle of *Glus;* there is in fact a strong *contrary* indication. The sixty-day limitation period provided by Congress is almost without precedent in its brevity. If there is any proper occasion for estopping a statute of limitations on equitable grounds, it is certainly where the statute is so brief that harsh injustice would result unless in appropriate circumstances its impact may be tempered by an equitable extension. Thus, only the strongest Congressional history should impel judicial engrafting of an exception from equitable estoppel in a statute of limitations as brief as the one here involved.

exemptions into the Act beyond those provided by Congress . . .' ".

Moreover, in *Glus* itself the Supreme Court rejected (p. 234-35, n. 11) prior decisions which had refused estoppel in actions created by statute on the theory that such estoppel would be an expansion of the legislatively authorized judicial jurisdiction. As stated in the annotation in 3 L. Ed.2d 1886, 1888, since *Glus* the former rule holding statutory causes of action exempt from equitable estoppel of limitations "no longer has any validity under federal law." And in *United States* v. *Price-McNemar Construction Co.*, 320 F.2d 663, 665 (C.A.9, 1963), decided after *Glus* and involving the Miller Act, the Court rejected the argument that statutes "that create a cause of action where none existed before" are jurisdictionally beyond application of the estoppel doctrine:[5]

> "This view, that the principles of estoppel against reliance upon statutes of limitation are not applicable to statutes that create a cause of action where none existed before and limit the time for commencing suit thereunder, has been rejected by the Supreme Court with regard to a statute of limitations contained in the Federal Employers' Liability Act. *Glus* v. *Brooklyn Eastern District Terminal*, 359 U.S. 231, 79 S.Ct. 760, 3 L.Ed.2d 770. In reaching that conclusion, the Court cited earlier cases in which the rejected view was expressed, but stated the language of those cases 'is in dicta and is neither binding nor persuasive.'
>
> "Without doubt statutory language could be devised, or the statutory history of a particular enactment could be such, that it would be necessary to hold that estoppel

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[5] See also, *Security Insurance Co.* v. *United States*, 338 F.2d 444 (C.A. 9, 1964).

> may not be raised as a defense to the statute of limitations there involved. But the statute of limitations made a part of the Miller Act is not significantly different from that which is incorporated in the Federal Employers' Liability Act construed in *Glus*. Nor have appellees here, any more than did the respondent in *Glus*, pointed to anything in the history of the Miller Act to indicate that the principle of estoppel may not be applied."

(4) Finally, the sovereign immunity doctrine is fundamentally irrelevant here. This is not a statute "creating" a right of monetary claim against the Government—it is a law prescribing the judicial procedure for testing Government taking of private property, wherein limitation periods must give way to the fundamental right to compensaton for taking. That is precisely the import of a recent decision by this Court, holding that where a Government taking is involved a liberal interpretation of limitations is required and ordinary periods may be rejected, keeping in mind "such considerations as undue delay, excusable neglect and prejudice from delay." In *N. V. Philips'* v. *A.E.C.*, 114 App. D.C. 400, 316 F. 2d 401, 407, a suit "against the sovereign" as much as the instant case, the Court's opinion emphasizes that in cases of Government taking, "the right to compensation should not be lightly regarded nor quickly denied" by rigorous application of statutes of limitations, and declines to apply the six year limitations statute where unfairness would result from its application:

> "Under the Act the Government exercised its constitutional power of eminent domain. In the exercise of that power, it is required to render just compensation. U.S. Const., Amend. V. In our view, the right to

> just compensation should not be lightly regarded nor quickly denied, particularly to these petitioners, who, as the record shows, cooperated fully with the United States in its wartime effort to develop the military use of atomic energy. If we were to resort to an analogous statute here for a guide to limitation, obviously § 2401(a) would be that statute. But in the circumstances of this case, involving as it does property rights condemned by the United States, where the Atomic Energy Commission itself did not even name the membership of the board which was to fix the value of the property condemned until almost three years after it was taken, and did not until after almost two years provide regulations pursuant to the Act under which a proper application could be made for just compensation, consideration of time alone cannot provide the answer. We should not approach the resolution of this problem myopically. We should not narrowly view the rights of petitioners whose property has been condemned. We cannot say that, under the circumstances disclosed by the record, these petitioners should have their right to just compensation and to an award pursuant to the Act cut off by a time bar of which neither Congress, the Commission nor the petitioners were aware. We hold that, in the circumstances of this case, petitioners' claims were filed with the Board within a reasonable time."

Even before this Court's *Philips'* ruling applied what was essentially an estoppel against limitations in a suit against the Government, it was clear that estoppel against the Government is not precluded by sovereign immunity. See, generally, Berger, *Estoppel Against the Government*, 21 U. Chi. L. Rev. 680. Thus, this Court had applied estoppel against the Government in *Stockstrom* v. *Com-*

missioner, 88 App. D.C. 286, 190 F. 2d 283, 289 and in *Vestal* v. *Commissioner*, 80 App. D.C. 264, 152 F. 2d 132, 136, and in the latter case it expressly stated: ". . . *estoppel must be applied with great caution to the Government and its officials. But in proper circumstances it does apply.*" [6]

In any event, this Court's refusal to apply the applicable six year statute of limitations in *Philips'* because just compensation under the Fifth Amendment "should not be lightly regarded nor quickly denied", applies precisely to the 60-day limitations plea in this case. Here the Government seized thousands of individual savings accounts in California on Pearl Harbor day, has conceded the validity of plaintiffs' debt claims for return, and pleads a 60-day limitation, although the delay by plaintiffs while the *Abe* test case was being litigated was even more excusable than the delay in the *Philips'* case. The Government seized these accounts in 1941 but did not finally adjudicate the plaintiffs' right to return until *20 years later* when it published the Yokohama Specie Bank schedule in 1961, and now the Government says that the private citizen is too late because he waited *more than 60 days* (while the *Abe* test case was pending) to file his action. On this view the Government can take twenty years to decide whether to return an innocent citizen's $50.00 savings account, and then expropriate it if the citizen waits beyond sixty days, awaiting the outcome of a test case by a fellow-claimant. We submit that this Court's *Philips'* ruling precisely applies to and governs the question in the instant case.

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[6] See also *Osbourne* v. *United States*, 164 F. 2d 767; *McWilliams* v. *United States*, 138 F. Supp. 863 (Ct. Cl., 1956).

IV

The Constitutional Question

We have demonstrated above that application of normal constructional rules precludes the exemption of the Government under the Trading With The Enemy Act from the *Glus* rule subjecting limitations to equitable estoppel. But in addition to constructional rules authorizing application of estoppel to the Government no less than to other civil defendants, a serious constitutional question arises from a contrary reading of the congressional intent in the Trading With The Enemy Act.

A fundamental ingredient of the due process of law guaranteed by the Fifth Amendment, is the concept that the Government may not make arbitrary or unreasonable intrusion upon private rights. Far from giving the Government a *preference* over a private defendant, it is the essential thrust of the due process guarantee to hold the Government to the highest standards of fairness and reasonableness. See, e.g., *Communist Party* v. *S.A.C.B.*, 351 U.S. 115; *Wong Yang Sung* v. *McGrath,* 339 U.S. 33; *Speiser* v. *Randall,* 357 U.S. 513. Thus, in a suit against the Government as a civil defendant, equitable rules of fairness no less rigorous than those applicable to other defendants must apply.

Moreover, this case involves a Government seizure of private property without judicial process. Consequently, the Fifth Amendment guarantee that private property shall not be taken without just compensation becomes pertinent in determining the ground rules for judicial review of plaintiffs' claims. The Supreme Court's landmark ruling validating alien property seizure—*Central Union Trust Co.* v. *Garvan,* 254 U.S. 554, 566—upheld such seizure only

"if adequate provision is made for a return in case of mistake." Yet the Government's position on the present issue is that a statute of limitations may be harshly and unfairly applied under the Act, though the circumstances call for equitable estoppel against its application—a position not consistent with the "adequate provision" requirement of *Garvan* and the just compensation requirement of the Fifth Amendment.

In subjecting limitations under federal statutes to equitable estoppel, the Supreme Court's *Glus* decision recognizes that even jurisdictional limitations may give way in appropriate circumstances to fundamental requirements of justice and equity. The Government, however, argues that no matter how unjust or unfair, the sixty day limitation of this statute cannot be subjected to the estoppel principle. But if Congress has imposed an unprecedented sixty day suit limitation under this Act and required its application *no matter how unjust or unfair* that rigorous application may be, then Congress has *not* made "adequate provision . . . for a return in case of mistake," as required by *Garvan.*

Thus, in view of the just compensation clause of the Fifth Amendment, the validity of the statute itself becomes subject to question if its limitations period is deemed exempt from the doctrine of equitable estoppel. We urge this Court to avoid that substantial constitutional question by holding that no less than the statutes involved in *Glus* v. *Brooklyn Eastern District Terminal,* 359 U.S. 231, *United States* v. *Price-McNemar,* 320 F. 2d 663 (C.A. 9, 1963), and *N. V. Philips'* v. *A.E.C.,* 114 App. D.C. 400, 316 F. 2d 401, this federal statute is subject to the principle of equitable estoppel against limitations.

Conclusion

For the foregoing reasons we submit that the judgment of the District Court should be reversed.

Respectfully submitted,

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(4943-7)

BRIEF FOR APPELLANTS.

United States Court of Appeals
for the
District of Columbia Circuit

No. 19283

MASARU OKAMOTO, JAMES KOTARO SAKAKURA, EIZO MORITA, HARUMATZU HINO,

Plaintiffs and Appellants,

vs.

NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL OF THE UNITED STATES,

Defendant and Appellee.

On Appeal From the United States District Court for the District of Columbia.

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Burnett -- Sup. Ct.

Vestal v. Com.

Question Presented.

The question is: where a government agency claims it has no jurisdiction to process a claim for the return of property the agency has seized and where the owner of the property comes to court to compel the agency to recognize his claim and return his property, may the agency successfully raise the bar of limitations set out in the very statute the agency claims give it no jurisdiction in the first place, and thus permit the Government to keep the property without paying just compensation therefor?

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TABLE OF AUTHORITIES CITED

*Cases chiefly relied upon are marked by asterisks.

United States Court of Appeals
for the
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No. 19283

MASARU OKAMOTO, JAMES KOTARO SAKAKURA, EIZO MORITA, HARUMATZU HINO,
Plaintiffs and Appellants,

vs.

NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL OF THE UNITED STATES,
Defendant and Appellee.

On Appeal From the United States District Court for the District of Columbia.

BRIEF FOR APPELLANTS.

Jurisdictional Statement.

This is a suit brought in the United States District Court below under 5 U.S.C. 1009, 28 U.S.C. 1331, 1357, 2201 and 50 U.S.C. Appx. 34f, as amended, the latter being a portion of the Trading With the Enemy Act. (JA 71.) The District Court on March 31, 1965, dismissed the action for lack of jurisdiction because of the 60-day statute of limitations proviso of Section 34(f). (JA 80.) Notice of Appeal was filed on April 2, 1965. (JA 81.) This Court has jurisdiction of the appeal under 28 U.S.C. 1291.

Statement of the Case.

This action was brought by, and on behalf of numerous, citizens of the United States who were born in Japan and who under prior law which discriminated against them because of that fact were unable to become citizens. (JA 71-72.) The plaintiffs (appellants) had deposits in the Yokohama Specie Bank, Ltd., whose assets were seized and vested following Pearl Harbor by the Alien Property Custodian, the predecessor to the appellee here. (JA 71.) Plaintiffs filed timely claims with appellee for the return of their money. (JA 71.) Appellee refused to recognize the claims, even to determine whether it was plaintiffs' money which appellee had seized, on the ground that, by virtue of §34(a) of the Trading with the Enemy Act (50 U.S.C. Appx. 34[a]) plaintiffs were not eligible claimants (JA 71-72, 75) because they had been interned and paroled under the Alien Enemy Act, 50 U.S.C. 21 (*ibid.*).

The complaint alleged that 50 U.S.C. Appx. 34a and 50 U.S.C. 21 do not apply to them

> "in that they were precluded solely by reason of their race and place of birth from becoming, although they desired so to do, and were in all other respects fully qualified to become, citizens of the United States." (JA 72.)

The complaint further alleged that if held to apply to them,

> "50 U.S.C. Appx. 34a is unconstitutional, as applied to prevent plaintiffs from recovering their money, because in violation of the due process

clause of the Fifth Amendment to the United States Constitution, in that it effectuates discrimination against the plaintiffs because of their race, because plaintiffs were prevented from becoming United States citizens solely because Congressional statutory provisions prevented them from becoming United States citizens because of their race." (JA 72.)

The prayer sought a judgment declaring that plaintiffs were not ineligible claimants, that their claims should be recognized by defendant as valid and that they be paid by defendant at the rate at which defendant seized plaintiffs' money or at the rate of the settlement in *Abe v. Kennedy,* in the Trial Court. (JA 72.) (See companion brief in *Honda v. Kennedy* and *Kondo v. Kennedy*, Nos. 19284 and 19282 in this Court, pp. 2-3.)

The Court below dismissed the complaint on the ground that the Court had no jurisdiction by reason that the complaint was not filed within the 60-day statute of limitation period of Section 34(f) of the Trading With the Enemy Act. (50 U.S.C. Appx. 34-[f].) The correctness of this ruling is the principle point on this appeal.

Statutes Involved.

50 U.S.C. 34(a) and (f), and 50 U.S.C. 21 are set in the appendix hereto.

Statement of Points.

Plaintiffs' suit was to obtain an order of Court compelling defendant to process plaintiffs' claims and to

pay the money due them, otherwise the Government would have seized and kept plaintiffs' property without paying just compensation therefor. Accordingly, the Trial Court erred in holding that the Trading With the Enemy Act, the very statute which the Government claims gave it no jurisdiction to proceed at all, likewise prevented the Court from entertaining the suit brought after the 60-day limitation period of that statute.

Summary of Argument.

The Government, at the expense of appellants, is seeking to take advantage of inconsistent positions. On the one hand, it claims that the statute, the Trading With the Enemy Act, gives appellants no rights; that it does not apply to them. But on the other hand, when it comes to the imposition of duties or liabilities, that the statute then does apply to appellants and that since they did not file suit within the short 60-day limitation period of the Act, appellants are completely out and that the Government is entitled to keep their money.

We argue that appellee cannot have it both ways. If the statute does not apply to plaintiffs, then their suit should not have been dismissed because they have a right to come to court under the Fifth Amendment and get from the Government the return of their property or just compensation for the taking.

Before that we argue that the principles of mandamus apply and that when an administrative agency misconceives its authority, the Court will order it to proceed to

an adjudication of the merits of the case presented to it. We urge that a statutory scheme which sets up a procedure, including a statute of limitations, for reviewing the correctness of administrative action when the agency does accept jurisdiction, does not and cannot prevent the Court from exercising its powers to direct the agency to exercise its authority when it has erroneously denied it.

For those reasons, we contend the judgment should be reversed and that the trial court should proceed to the question as to whether plaintiffs are precluded by the Trading With the Enemy Act from obtaining their money back, or if they are, whether the statute is constitutional.

ARGUMENT.

I.

The Principle of Interstate Commerce Commission v. Humboldt Steamship Company, 224 U.S. 474, Is Applicable Here.

The thrust of plaintiffs' complaint was to recover back from defendant the money which he[1] had seized from them and which he now claims the right to keep. In so doing, plaintiffs sought, in effect, an order from the Court directing defendant to process plaintiffs' claims. (JA 72.) In so doing, plaintiffs sought a determination from the Court (*ibid.*) that the Trading With the Enemy Act which purported to make ineligible for return of the money, persons such as plaintiffs who were "alien enemies" only because of the accident of their birth and because of the previous discriminatory naturalization laws, did not apply to them or, if it did, was unconstitutional under the 5th Amendment and that, therefore, the Office of Alien Property did have authority to proceed with their claim.

But defendant, in interposing his objection to the Court proceeding on the ground that the suit was not filed within the 60-day limitation period of the Trading With the Enemy Act (JA 74), successfully prevented the Court from reaching either the statutory interpretation or constitutional issue. In other words, defendant's position is that insofar as defendant's authority to consider plaintiffs' claims at all was concerned, the Act prevented him from so doing (JA 75), but in so far as their seeking Court adjudication that the

[1]Meaning, of course, the Attorney General's predecessor, the Alien Property Custodian, and including the present Office of Alien Property.

Act does not apply or if it did, it was unconstitutional, the Act gave authority to him to thwart that effort.

The Law cannot be so wooden in its application. Plaintiffs are entitled to a court adjudication. They may not be right — although they think they are — that the Act does not apply to them or if it does it is unconstitutional, but the Act cannot, at one and the same time be used to bar plaintiffs in the first instance on the ground that they are not subject to it, and then to bar them in the second instance on the ground that they are subject to it.

In *Interstate Commerce Commission v. United States ex rel. Humboldt Steamship Company,* 224 U.S. 474, the steamship company filed a petition with the Interstate Commerce Commission seeking an order requiring competing companies to file certain schedules and for the establishment of rates. The Commission dismissed, as here, the petition on the ground that it had no jurisdiction to make the order prayed for. The Commission contended that the Court could not issue an order against it; that the steamship company's remedy, if any, lay with seeking review before the then Commerce Court. The Supreme Court, as had the Court of Appeals, though not the District Court, refused to allow the Commission to thus take refuge behind its enabling act. The Court acknowledged that mandamus would not issue to control the exercise of an administrative agency's discretionary power, but that (pg. 484)

> "if it absolutely refuse to act, deny its power, from a misunderstanding of the law, it cannot be said to exercise discretion."

Accordingly, the Court approved the decision of the Court of Appeals which had directed the Commission to proceed to the merits of the controversy.

That principle is applicable here. In dismissing plaintiffs' claims on the ground of their alleged ineligibility, defendant simply refused to act; he denied his power. Plaintiffs claim that this was a misapplication of the law and that the trial court should have inquired into that issue. No more than could the statutory procedure on which the Interstate Commerce Commission relied in *Humboldt,* prevent the Court from acting, no more can the statutory procedure here prevent the Court from acting.

Mandamus is the appropriate remedy to require an administrative agency "to take jurisdiction when it declined to do so." (*Addison v. Holly Hill Fruit Products,* 322 U.S. 607, 622). When an administrative agency misunderstands or misinterprets the powers given it, the Court will, by appropriate remedy, require the agency to perform its duty (*ibid*); this principle has been repeated again and again. *(United States ex rel. Louisville Cement Company v. Interstate Commerce Commission,* 246 U.S. 638, 642-643, and cases cited.)

Plaintiffs in this case received no adjudication from the Office of Alien Property as to the merits of their claims. They received no word — even as much as the plaintiffs in *Honda* and *Kondo,* in this Court, Nos. 19284 and 19282 — as to whether plaintiffs were indeed debt depositors with the Yokohama Specie Bank, and if so, the amount of their debt, *i.e.,* what rate of exchange the Office felt should be paid them. The Office of Alien Property simply refused to proceed

at all; it slammed, so to speak, the door in plaintiffs' faces. No statutory scheme, including a 60-day statute of limitations, can prevent the Court from rectifying this wrong.

II.

The Due Process Clause of the Fifth Amendment Prevents the Dismissal of Plaintiffs' Complaint.

It is the law that a motion to dismiss may not be granted unless it appears without doubt that the plaintiff can prove no set of facts which would entitle him to relief. (*Conley v. Gibson,* 355 U.S. 41, 45-46.)

The essence of defendant's claim in administratively dismissing plaintiffs' claims is that the Trading With the Enemy Act, which sets up a procedure for returning property to one who is a creditor of one whose property the Government has seized, does not apply to plaintiffs — gives them *no* remedy for return. But if this be so, the debt which is owing by the Government to plaintiffs is not just wiped out; it does not erase the fact that the Government has taken plaintiffs' property — without just compensation — and one of its officers, defendant here, claims the right to keep it. Plaintiffs' suit, therefore, becomes a simple one under the Fifth Amendment to obtain redress from official action which has been taken in violation of that Amendment. (see Appellants' *Honda-Kondo* brief, pp. 25-26; cf. *Dillon v. United States,* 230 F. Supp. 487, 490-491 [D Ore. 1964] and cases cited.)

The defendant cannot have it both ways. It cannot be allowed to say in one breath that the statute under which the plaintiffs seek to get their money back does not apply to them, and in the next, when the plaintiffs

come to court, that that very statute denies them the right to judicial relief. Nor can the defendant by that same argument, cause all avenues of judicial relief to be denied to plaintiffs — especially in the face of the positive interdict of the 5th Amendment. "To hold to the contrary . . . would be to permit the Government to have the advantage of contradictory positions." (*Jones v. United States,* 362 U.S. 257, 263.) The Government must turn square corners.

Conclusion.

The judgment should be reversed.

Respectfully submitted,

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APPENDIX.

Statutes Involved.

50 U.S.C. Appendix 34(a) and (f), provide:

"Sec. 34 (a) Any property or interest vested in or transferred to the Alien Property Custodian (other than property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, shall be equitably applied by the Custodian in accordance with the provisions of this section to the payment of debts owed by the person who owned such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian. No debt claim shall be allowed under this section if it was not due and owing at the time of such vesting or transfer, or if it arose from any action or transactions prohibited by or pursuant to this Act [sections 1-6 and 7-39 of this Appendix] and not licensed or otherwise authorized pursuant thereto, or (except in the case of debt claims acquired by the Custodian) if it was at the time of such vesting or transfer due and owing to any person who has since the beginning of the war been convicted of violation of this Act as amended, sections 1-6 of the Criminal Code, title I of the Act of June 15, 1917 (ch. 30, 40 Stat. 217), as amended; the Act of April 20, 1918 (ch. 59, 40 Stat. 534), as amended; the Act of June 8, 1934 (ch. 327, 52 Stat. 631), as amended [sections 611-621 of Title 22]; the Act of January 12, 1938 (ch. 2, 52 Stat. 3); title I, Alien Registration Act, 1940 (ch. 439, 54 Stat. 670); the Act of October 17, 1940 (ch. 897, 54 Stat. 1201); or the Act of June 25, 1942 (ch. 447, 56 Stat. 390 [sections

781-785 of this Appendix]). Any defense to the payment of such claims which would have been available to the debtor shall be available to the Custodian, except that the period from and after the beginning of the war shall not be included for the purpose of determining the application of any statute of limitations. Debt claims allowable hereunder shall include only those of citizens of the United States or of the Philippine Islands; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia or the Philippine Islands; those of other natural persons who are and have been since the beginning of the war residents of the United States and who have not during the war been interned or paroled pursuant to the Alien Enemy Act [section 21 of this title]; and those acquired by the Custodian. Legal representatives (whether or not appointed by a court in the United States) or successors in interest by inheritance, devise, bequest, or operation of law of debt claimants, other than persons who would themselves be disqualified hereunder from allowance of a debt claim, shall be eligible for payment to the same extent as their prncipals or predecessors would have been.

* * * * *

"(f) If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule,

the Custodian shall assign priorities in accordance with the provisions of subsection (g) hereof. Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Custodian, as defendant. A copy of such complaint shall be served upon the Custodian and on each claimant named in the schedule. The Custodian, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, any findings or other determinations made by the Custodian with respect thereto, and the schedule prepared by the Custodian. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian or could not reasonably have been adduced before him or was not available to him. Any interested debt claimant who has filed a claim with the Custodian pursuant to this section, upon timely application to the court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying the schedule as prepared by the Custodian and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of

the money from which, in accordance with subsection (d) hereof, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review.

50 U.S.C. 21 provides:

Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety. R.S. § 4067; Apr. 16, 1918, c. 55, 40 Stat. 531.

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BRIEF FOR THE APPELLEE

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19282

MASAE KONDO, ET AL., APPELLANTS

v.

NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL
OF THE UNITED STATES, APPELLEE

No. 19283

MASARU OKAMOTO, ET AL., APPELLANTS

v.

NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL
OF THE UNITED STATES, APPELLEE

No. 19284

AYAKO HONDA, ET AL., APPELLANTS

v.

NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL
OF THE UNITED STATES, APPELLEE

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Statement of Question Presented

The question presented is whether the District Court correctly dismissed the appellants' complaints on the ground that the Court lacked jurisdiction of the subject matter of the actions since the complaints were not filed within the limitation period prescribed by Section 34(f) of the Trading with the Enemy Act.

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* Denotes cases primarily relied on.

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UNITED STATES COURT OF APPEALS
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OF THE UNITED STATES, APPELLEE

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLEE

Counter-Statement of the Case

These actions were commenced on July 9, July 6, and May 19, 1964, respectively, to set aside the dismissal by the Attorney General of appellants' debt claims based upon yen deposits

in the American branches of The Yokohama Specie Bank, Ltd., that were asserted under Section 34 of the Trading with the Enemy Act, 50 U.S.C. App. 34, against the vested property of The Yokohama Specie Bank, Ltd. The property in the United States of this Japanese bank was vested as Japanese enemy property under the Trading with the Enemy Act, 50 U.S.C. App. 1. The bank was liquidated by local superintendents of banks in New York, California, Washington, and Hawaii, and the net proceeds remaining after liquidation, amounting to approximately $17,000,000.00 were turned over to the Office of Alien Property.

As creditors of The Yokohama Specie Bank, Ltd., Japan, the appellants after the war could have collected their deposits in yen from the Liquidator of The Yokohama Specie Bank, Ltd., Tokyo, Japan, or from its successors, the Bank of Tokyo, Ltd. at the postwar rate of exchange of 361.55 yen to the dollar. However, as an alternative remedy, the Congress on August 8, 1946 enacted Section 34 of the Trading with the Enemy Act, which authorized the Alien Property Custodian[1/] to pay from the proceeds of vested property the debts of the former owners of the vested property that were due and owing on the vesting date. This legislation was enacted by the Congress as a matter of grace since an American creditor has no constitutional right to

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1/ By Executive Order No. 9788 (October 14, 1946, 11 F.R. 11981), the Attorney General succeeded to the powers and duties of the Alien Property Custodian. The term "Custodian" or "Office of Alien Property" will be used to refer to the Alien Property Custodian, or the Attorney General as successor, as the context may require.

be paid out of the vested assets of his enemy debtor. Moreover, Congress excluded from the benefit of the statute individuals and their successors who were not citizens or residents of the United States during World War II and individuals who had been interned or paroled as potentially dangerous alien enemies under the Alien Enemy Act, 50 U.S.C. 21.

Pursuant to Section 34(b) of the Act, the Custodian fixed November 18, 1949, as the final date for filing debt claims against The Yokohama Specie Bank Ltd. Approximately 10,000 Yokohama Specie Bank Ltd. debt claims, of which about 7,500 were based upon yen deposits, were timely filed with the Office of Alien Property. The aggregate claimed in these 10,000 claims exceeded the value of the seized assets of the Bank. Consequently, these Yokohama Specie Bank Ltd. debt claims were processed by the Office of Alien Property pursuant to Section 34(f) of the Act relating to insolvent debtor's estates. Claims of persons who had been interned or paroled under the Alien Enemy Act, 50 U.S.C. 21, were dismissed because of the express provision of Section 34(a) of the Trading with the Enemy Act, 50 U.S.C. App. 34(a), excluding from the class of eligible debt claimants persons who were interned or paroled pursuant to the Alien Enemy Act. Sasaki v. Rogers, 185 F. Supp. 191 (D.D.C.).

After extensive consolidated hearings before a Hearing Examiner on the yen deposit claims of both The Yokohama Specie Bank, Ltd. and The Sumitomo Bank, Ltd., the Director of the Office of Alien Property took the position, as maintained by

the banks in Japan, that the claims were allowable at the post-war rate of exchange of 361.55 yen to the dollar, pursuant to the Judgment Day rule of Deutsche Bank v. Humphrey, 272 U.S. 517, on the ground that the deposits were payable in yen in Japan. Since the original certificates of deposit on which the claims were based could be redeemed at the postwar rate of exchange upon surrender of the certificates by the holders to the banks in Japan, and in numerous instances were so redeemed, it was deemed essential, in order to avoid double payment (i.e. payment by the Office of Alien Property after the debt had been paid in Japan), that the original certificates be submitted by the claimants to the Office of Alien Property before the claim was finally allowed.

Because of the number of claims involved and the necessity of printing a Final Schedule of Allowed claims for the insolvent estate of the Yokohama Specie Bank, Ltd., pursuant to Section 34(f) of the Act, it was not administratively feasible to postpone requiring the submission of the original certificate until the time of actual payment.

Therefore, pursuant to Section 502.25(1) of the Rules of Procedure for Claims of the Office of Alien Property, registered letters were sent by the Office of Alien Property to all eligible yen deposit claimants at the addresses designated by claimants in the Notice of Claim Forms stating that the claim could be allowed at the post-war rate of exchange and requesting that the original yen certificates be submitted to the Office of

Alien Property. The letter expressly stated that, if claimants wished to maintain their claims with the Office of Alien Property, they must submit the original certificates of deposit but might, if they wished, file a statement of thier objections to the application of the post-war rate of exchange. [J.A. 30] The letter further stated that, if the original certificates were not submitted within the designated period, or if an explanation of why they could not be sent was not timely submitted, it would be concluded that the claims had been abandoned in their entirety, and the claims would be dismissed. Where the original certificates were not submitted as requested or where the letters were returned by the Post Office as undeliverable, the claims were dismissed on the ground of abandonment. However, if claimants whose claims had been dismissed for abandonment had submitted the original certificates to the Office of Alien Property at any time, prior to the issuance of the Yokohama Specie Bank, Ltd. Final Schedule of allowed Claims and Proposed Payments, pursuant to Section 34(f) of the Act, the Claims would have been reinstated. It was the consistent policy of the Office of Alien Property to reopen yen deposit claims dismissed on the ground of abandonment upon the presentation of the original yen certificates at any time prior to the issuance of the Final Schedule.

1,817 yen deposit claims against the Yokohama Specie Bank, Ltd. for which either original certificates of deposit or satisfactory evidence of loss had been submitted to the Office of

Alien Property were allowed at the post-war rate of exchange of 361.55 yen to the dollar. In accordance with the provisions of Section 34(f) of the Act, the Custodian prepared and served by registered mail on all the Yokohama Specie Bank Ltd. claimants who had not withdrawn their claims (i.e.,: allowed and dismissed claims) a Final Schedule of all debt claims allowed and the proposed payment to each claimant. Claimants whose claims had been dismissed were not listed on the Final Schedule.

Section 34 of the Act provides for judicial review of the administrative disallowance of a debt claim in whole or in part by the Custodian. In the case of a solvent estate (i.e.,: one in which the proceeds of the vested property of the debtor exceed the aggregate of debt claims) Section 34(e) provides that a complaint for review may be filed in the United States District Court for the District of Columbia within sixty days from the mailing of the order of disallowance. In the case of an insolvent estate (i.e.,: one in which the aggregate of debt claims exceeds the value of the seized assets of the debtor) Section 34(f) of the Act provides that a complaint for review must be brought within sixty days from the date of the mailing of a copy of the Final Schedule to the claimant whose claim had been disallowed in whole or in part.

A complaint for review (Abe v. Kennedy, Civil Action No. 2529-61) was timely brought under Section 34(f) of the Act on behalf of all the Yokohama Specie Bank, Ltd. yen deposit claimants whose claims appeared on the Final Schedule of the Bank

as allowed at the post-war rate of exchange. The complaint asserted that the claims should have been allowed by the Custodian at the pre-war rate of $.234 per yen.

Proceedings in the Abe case were postponed pending the outcome of the companion case of Aratani v. Kennedy, Civil Action No. 3164-58, relating to the allowed yen deposit claims asserted against the Sumitomo Bank, Ltd. On July 7, 1961, the District Court granted the Government's motion for summary judgment in Aratani and on March 28, 1963, the Court of Appeals affirmed. 115 U.S. App. D.C. 97, 317 F. 2d 161. On October 21, 1963, the Supreme Court granted certiorari. 375 U.S. 877. Thereafter a compromise settlement of the allowed Yokohama Specie Bank, Ltd. and Sumitomo Bank, Ltd. yen deposit claims was entered into by the Attorney General and plaintiffs' counsel, which Judge Leonard P. Walsh approved on May 18, 1964. 228 F. Supp. 706. Under the compromise settlement, the Yokohama Specie Bank, Ltd. plaintiffs and their counsel were to be paid the total sum of $5,181,549.12. After the deduction of attorneys' fees of 20%, $4,145,239.30, or approximately 49% of the amount claimed, was paid to the plaintiffs in the Abe case from funds available in the Yokohama Specie Bank, Ltd. account. Only about 25% of each claim was paid to the plaintiffs in the Aratani case because the amount of Sumitomo Bank, Ltd. funds was not sufficient to pay more, and the payments which were made virtually exhausted the fund. The appellants in the present actions were not included in the compromise settlement since they were not parties to the litigation being compromised.

After the completion of the payments under the compromise settlement, the sum of approximately $10,000,000.00 remains in the account of The Yokohama Specie Bank, Ltd. in the Office of Alien Property. Pursuant to Section 39 of the Act, 50 U.S.C. App. 39, enacted on August 7, 1953, any remaining proceeds in the Yokohama Specie Bank, Ltd. account will be transferred to the War Claims Fund in the United States Treasury for administration by the Foreign Claims Settlement Commission in paying various war claims of United States citizens arising principally out of German and Japanese military operations in World War II.

The three complaints involved in this consolidated appeal were filed on behalf of three different classes of Yokohama Specie Bank, Ltd. yen deposit debt claimants whose claims were dismissed and hence did not appear on The Yokohama Specie Bank, Ltd. Final Schedule. The first complaint, Ayako Honda, et al., was filed on behalf of those claimants who received the letters from this Office requesting that they submit the original yen certificates but who did not send them in and whose claims were consequently dismissed for abandonment. The second complaint, Okamoto, et al., was filed on behalf of those debt claimants whose claims were dismissed because they had been interned and paroled an enemy aliens pursuant to the Alien Enemy Act and who, when permitted by law, became United States citizens. The third complaint, Masae Kondo, et al., was filed on behalf of all persons whose timely filed debt claims against The Yokohama Specie Bank were dismissed but who allegedly did not receive

notice from defendant of said dismissal and who had no knowledge of such dismissal. However, pursuant to Sections 502.26 and 502.202(e) of the Rules of Procedure for Claims, 8 CFR 502.26, 502.202(e), a copy of The Yokohama Specie Bank Ltd. Final Schedule with accompanying Notice was sent to Mrs. Masae Kondo by registered mail on September 8, 1961 to her designated 3619 1/2 Bellevue Avenue address (J.A. 64). This letter was not returned by the Post Office as undeliverable. See Affidavit of Nov. 20, 1964 of Julian M. Hare (J.A. 65).

Appellants request that the dismissed claims be recognized either at the prewar rate of exchange of 23.4 cents per yen or, in the alternative, at the same conversion rate as the plaintiffs in the Abe case were paid under the compromise settlement.

On March 31, 1965, the District Court entered Orders granting appellee's motion to dismiss the three complaints for review on the ground that the court lacked jurisdiction of the subject matter of the actions since the complaints were not filed within the sixty-day limitation period prescribed by Section 34(f) of the Trading with the Enemy Act (J.A. 36, 66, 80).

Statutes Involved

The relevant portions of Section 34 of the Trading with the Enemy Act are set forth in the Appendix to this brief.

SUMMARY OF ARGUMENT

The district court did not err in granting appellee's motion to dismiss the complaints on the ground that the court had no jurisdiction over the subject matter of the actions since the actions were not brought within the limitation period of Section 34(f) of the Trading with the Enemy Act. Section 34(f) of the Act requires that a complaint for review of the disallowance of a debt claim, asserted against an insolvent debtor like the Yokohama Specie Bank, Ltd., be filed within sixty days after the date of the mailing of a copy of the Final Schedule of Allowed Claims and Proposed Payments to the claimant whose claim has been disallowed in whole or in part.

A.

These suits against the Attorney General for the payment of debt claims from enemy property vested under the Trading with the Enemy Act are suits against the United States. Therefore, the conditions of the sovereign's consent to be sued as set forth in the Trading with the Enemy Act must be complied with, and the failure to satisfy such conditions is fatal to the court's jurisdiction.

B.

The United States is not estopped from asserting the defense of the sixty-day limitation of section 34(f) of the Trading with the Enemy Act. Since the 60-day limitation is a

condition of the sovereign's consent to be sued, it cannot be extended by estoppel. Moreover, no grounds for estoppel have been shown since appellants have failed to establish any representations on the part of the Government with respect to the statute of limitations upon which they relied to their detriment. Letters of the Office of Alien Property to appellants informed them of the sixty-day limitation.

C.

A remedy in the nature of mandamus such as that applied in the case of Interstate Commerce Commission v. Humboldt Steamship Co., 224 U.S. 474, is not available to appellants. Such a remedy is available only where the administrative agency has failed to exercise jurisdiction; whereas here the Office of Alien Property exercised jurisdiction over appellant's claims when it dismissed them on the ground of abandonment or ineligibility. Moreover, the remedy of mandamus under the Humboldt decision is available only where there is no other remedy. Here, appellants could have timely filed a complaint for review under Section 34(f) of the Trading with the Enemy Act.

D.

The District Court's dismissal of the complaints does not present a constitutional question under the Fifth Amendment since none of appellants' property has been taken by the Government, but only the property of their debtor, the Yokohama Specie Bank, Ltd.

ARGUMENT

THE DISTRICT COURT CORRECTLY GRANTED APPELLEE'S MOTION TO DISMISS THE COMPLAINTS ON THE GROUND THAT THE COURT HAD NO JURISDICTION OVER THE SUBJECT MATTER OF THE ACTIONS SINCE THEY WERE NOT BROUGHT WITHIN THE SIXTY-DAY LIMITATION PERIOD PRESCRIBED BY SECTION 34(f) OF THE TRADING WITH THE ENEMY ACT.

A. Failure to Satisfy the Conditions of the Sovereign's Consent to be Sued Is Fatal to the Court's Jurisdiction.

These suits against the Attorney General for the payment of debt claims from enemy property vested under the Trading with the Enemy Act are suits against the United States. Banco Mexicano v. Deutsche Bank, 263 U.S. 591, 602-603 (1924) (suit under Section 9(a) of the Trading with the Enemy Act for the payment of a debt claim from the proceeds of vested property); see Codray v. Brownell, 93 U.S. App. D.C. 112, 207 F. 2d 610 (C.A.D.C.), cert. den. 347 U.S. 903 (suit by debt claimant to compel Attorney General to vest property of his debtor). Thus, the conditions of the sovereign's consent to be sued as set forth in the Trading with the Enemy Act must be complied with, and the failure to satisfy such conditions is fatal to the court's jurisdiction. See Brownell v. Nakashima, 243 F. 2d 787, 792 (C.A. 9), cert. den. 355 U.S. 872; Cisatlantic Corp. v. Brownell, 131 F. Supp. 406, 407 (S.D. N.Y.), aff'd 222 F. 2d 957 (C.A. 2); and Von Clemm v. Smith, 204 F. Supp. 110, 113 (S.D. N.Y.), holding that the court is without jurisdiction in a suit under Section 9(a) of the Trading with Enemy Act where the two-year limitation period of Section 33 of the Act to

claims for the return of vested property has not been complied with. Moreover, Section 7(c) of the Trading with Enemy Act, 50 U.S.C. App. 7(c), expressly provides:

> The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be or seized by him shall be that provided by the terms of this Act * * *.

Judicial review of the action of the Custodian in disallowing a debt claim in whole or in part in an insolvent estate is now governed by Section 34(f) of the Act, enacted on August 8, 1946, which provides in pertinent part:

> Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Custodian as defendant2/ * * * The Court shall enter judgment affirming or modifying the schedule as prepared by the Custodian and directing payment, if any be found due, pursuant to the schedule as affirmed or modified * * * .

Section 34(i) of the Act, 50 U.S.C. App. 34(i) states (emphasis supplied):

> The sole relief and remedy available to any person seeking satisfaction of a debt claim out of any property or interest which shall have been vested

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2/ Similarly, Section 34(e) of the Act provides with respect to a debtor's account where the aggregate of debt claims does not exceed the available proceeds that "within sixty days after the date of mailing of the Custodian's determination, any debt claimant whose claim has been disallowed in whole or in part may file in the District Court of the United States for the District of Columbia a complaint for review of such disallowance naming the Custodian as defendant". In such cases the publication of a final schedule is not required since the administrative burden of making pro-rata payments does not exist.

> in or transferred to the Alien Property Custodian * * * or the proceeds thereof, shall be the relief and remedy provided in this section, and suits for the satisfaction of debt claims shall not be instituted, prosecuted, or further maintained except in conformity with this section.

Since appellants' complaints were commenced on May 19, July 6 and July 9, 1964, it is undisputed that they were not commenced within the sixty days following the mailing of copies of the Yokohama Specie Bank Ltd. Final Schedule to appellants, which took place between August 22, 1961 and October 19, 1961 (J.A. 34). Under these circumstances the District Court had no jurisdiction over the subject matter of the actions and correctly granted appellee's motions to dismiss the complaints.

B. The United States Is Not Estopped From Asserting the Defense of the Sixty-Day Limitation of Section 34(f) of the Trading with the Enemy Act.

Appellants in Kondo (No. 19,282) and Honda (No. 19,284) contend that under principles of equitable estoppel the Government is estopped from relying on the 60-day limitation period. This argument is without merit. It is well established that the United States is not estopped by the acts of its officers and agents who, without authority, enter into agreements to do what the law does not sanction or permit. Utah Power & Light Co. v. United States, 243 U.S. 389, 408 (occupancy and use of lands of United States forest reservations); United States v. Stewart, 311 U.S. 60, 70 (taxability of capital gains from dealings in farm loan bonds). Since the 60-day limitation of Section 34(f) is a condition of the sovereign's consent to be

sued, it cannot be extended by estoppel. Thus, in Legerlotz v. Rogers, 105 U.S. App. D.C. 256, 266 F. 2d 457, 459 f.n. 5, cert. dismissed, 362 U.S. 938, a case involving a suit for the return of vested property under Section 9 of the Trading with Enemy Act, 50 U.S.C. App. 33, this Court stated (at page 459 f.n. 5):

> Even if it were to be considered reasonable for the appellant to have relied on the acts of the Custodian in refraining from bringing suit under Section 9(a), the fact remains that estoppel cannot be used against the Federal Government.

As the Supreme Court has made clear in ruling that a limitation period placed upon a suit against the Government (Soriano v. United States, 352 U.S. 270, 276): "And this Court has long decided that limitations and conditions upon which the Government consents to be sued must be strictly observed and exceptions thereto are not to be implied. United States v. Eberwood, 312 U.S. 584, 590-591 (1941), and cases there cited." And see Pittman v. United States, 341 F. 2d 739, 741 (C.A. 9), where the Ninth Circuit ruled on the basis of Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380, and Munro v. United States, 303 U.S. 36, that a limitations period could not be extended by estoppel against the Government.

While appellants contend (pp. 18-24 of appellants' brief) that this rule has been modified by recent decisions, they have been unable to cite any case actually applying estoppel against the Government in a case involving a statute of limitations. N.V. Philips Gloeilampenfabrieken v. Atomic Energy Commission, 114 U.S. App. D.C. 400, 316 F. 2d 401, is not controlling since

it merely held that, in the absence of an express limitation period, a claim for compensation for the taking of patents or processes useful in the production of fissionable material might be brought before the Patent Compensation Board of the Atomic Energy Commission within a reasonable time and was not subject to the general six-year limitation of 28 U.S.C. 2401(a). The question whether the Government could be estopped with respect to an express statutory limitation on court review of administrative action was not in issue in the case.

Glus v. Brooklyn Terminal, 359 U.S. 231, in which it was ruled that a private corporate defendant in an action under the Federal Employer's Liability Act could be estopped from raising the defense of the statute of limitations was not a suit against the United States. Similarly, United States v. Price-Mc Nemar Construction Co., 320 F. 2d 663 (C.A. 9), relied on by appellants, is inapplicable since it did not involve a suit against the United States but was a suit by the United States on a payment bond under the Miller Act, 49 Stat. 794, 40 U.S.C. 270(b).

Indian Towing Co., Inc. v. United States, 350 U.S. 61, Rayonier v. United States, 352 U.S. 315, and United States v. Muniz, 374 U.S. 150, in which the Supreme Court extended the substantive provisions of the Federal Tort Claims Act to, respectively, the negligence of the Coast Guard in the operation of a lighthouse, the negligence of the Fire Service in fighting forest fires, and the negligence of inmates of Federal prisons, did not involve estoppel or a statute of limitations. Stockstrom

v. Commission, 88 U.S. App. D.C. 286, 190 F. 2d 283, 298 and Vestal v. Commissioner of Internal Revenue, 80 U.S. App. D.C. 264, 152 F. 2d 132, were suits by the United States for the collection of income taxes and not suits against the United States. Osbourne v. United States, 164 F. 2d 767 (C.A. 2), did not relate to estoppel against the United States, but merely tolled the statute of limitations in a libel in admiralty for personal injuries for the period while plaintiff was a prisoner of war of the Japanese. McWilliams v. United States, 138 F. Supp. 863 (Ct. of Claims) did not involve estoppel, but concerned an interpretation of when the Court of Claims statute of limitation, 28 U.S.C. 2501 ("six years after such claim accrues") commenced to run in a suit where the United States had delayed disclosing the cost of completion and balance due under a contract.

Thus, as far as a statute of limitation is concerned, the general rule that estoppel does not run against the United States remains in full force and effect. Moreover, there is nothing in the legislative history of Section 34 of the Act which shows a Congressional intent to extend the 60-day limitation period by estoppel. The 60-day period is an integral part of the comprehensive procedure set up by the statute for the administrative processing and payment of debt claims. The expeditious termination of alien property junctions, now scheduled for completion by June 30, 1966,[3/] would be impossible if

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3/ See Message of the President to the Congress of June 10, 1965, upon the occasion of his forwarding the Annual Report of the Office of Alien Property for fiscal year 1964, Congressional Record (Daily Ed.) June 10, 1965, pp. 12719-12720.

the time for filing complaints for review could be indefinitely extended by estoppel.

Moreover, there is no merit to appellants' contention (appellants' brief f.n. 4, p. 20) that there is a special reason for applying estoppel against the Government here since the sixty-day limitation of Section 34(b) "is almost without precedent in its brevity." The sixty-day period is the usual period prescribed for judicial review of the actions of Federal administrative agencies. 3 Davis, Administrative Law Treatise 23.03. Thus, a sixty-day period for filing a petition or complaint for review is prescribed by the Review Act of 1950, 5 U.S.C. 1031, 1034, with respect to the Federal Communication Commission, the Secretary of Agriculture and the Maritime Administration. Likewise, petitions for the review of orders of the Federal Trade Commission (15 U.S.C. 45(c)), the Securities and Exchange Commission (15 U.S.C. 78y), the Civil Aeronautics Board (49 U.S.C. 1486), the Federal Power Commission (16 U.S.C. 8251(b)), and the Secretary of Health, Education and Welfare under the Social Security Act (42 U.S.C. 405(g)), must be brought within 60 days from the final order of the administrator.

In any event, no grounds for estoppel have been shown in these cases against the Government with respect to the sixty-day statute of limitations. It is well settled that necessary elements of equitable estoppel include a representation or a concealment of a material fact by one party upon which the other

party reasonably relies to his detriment. Parker v. Sager, 85 U.S. App. D.C. 4, 174 F. 2d 657, 661; 3 Pomeroy, Equity Jurisprudence (1941) § 805. See Pittman v. United States, 210 F. Supp. 763, 764 (N.D. Cal.), affirmed, 341 F. 2d 739 (C.A. 9), where the court ruled that an allegation by plaintiff that "he was advised by an assistant United States attorney whom he refused to name that the statute of limitations in issue did not apply to a minor and that he relied on this advice" (210 F. Supp. 763, 764 (N.D. Cal.)) was not sufficient to raise an estoppel against the United States with respect to the statute of limitations of the Tort Claims Act. Moreover, the measure of the operation of an estoppel is the extent of the representation made by one party and acted upon by the other. 3 Pomeroy, Equity Jurisprudence, § 813, p. 234 (1941). Thus, in Glus v. Brooklyn Eastern Terminal, 359 U.S. 231, 235, relied on by appellants, the Supreme Court ruled that a private corporate defendant could be estopped with respect to the statute of limitation of the Federal Employers' Liability Act only if plaintiff could show that defendant's "responsible agents, agents with some authority in the particular matter, conducted themselves in such a way that petitioner was justifiably misled into a good-faith belief that he could begin his action at any time within seven years after it had accrued."

Here, no representation has been made by the Government or by any of its employees to appellants that the defense of the sixty-day limitation period would not be interposed. Indeed,

the Government expressly called to appellants' attention the existence of the 60-day limitation. The registered letter that each claimant received from the Office of Alien Property requesting that the yen certificates be submitted to the Office expressly stated (J.A. 30):

> Within sixty days after the issuance of the schedule, any aggrieved claimant may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule naming the Attorney General as defendant. If no complaint for review is filed, payments will be made in accordance with the schedule.

Moreover, the Notice enclosing a copy of The Yokohama Specie Bank, Ltd. Final Schedule that each claimant received from the Office of Alien Property stated (J.A. 34):

> Pursuant to Section 34(f) of the Trading with the Enemy Act, as amended, any claimant considering himself aggrieved by this Final Schedule may, within sixty (60) days from the date of the mailing of the Schedule, file in the United States District Court for the District of Columbia a complaint for review of this Schedule naming the Attorney General as defendant. A copy of such complaint must be served on the Attorney General and on each claimant named in the Schedule. If no such complaint for review is filed within the sixty-day period, payments to claimants will be made by this Office as specified in the Final Schedule.

In the light of these two notices, it is clear that the Government did not conduct itself in such a way that appellants were justifiably misled into a good faith belief that they did not have to file their suit within the sixty-day limitation as required by the Glus case.

There is no basis for appellants' contention (p. 17 of appellants' brief) "that the Government is at least chargeable

with concurrent, if not prime responsibility for the failure of plaintiffs to file suit while the Abe case was pending." In support of this argument, appellants assert that: (1) the 1958 decision of the Office of Alien Property to pay the yen deposit claims was erroneous and legally inadequate, (2) appellants were misled by the Office of Alien Property letters "purporting to explain but not adequately explaining the relationship between its demand for original certificates and the proposed compensation formula and the rights of judicial review," and (3) appellants reasonably expected that the Government, having recognized the validity of their claims, would thereafter extend to them the benefit of the Abe case since they differed from the Abe plaintiffs only in having declined to surrender their original certificates.

These allegations are without foundation. The decision to allow the yen deposit claims at the postwar rate of exchange reflected the established position of the Office of Alien Property in the light of the applicable law, and was not erroneous. The letters of the Office of Alien Property to appellants (J.A. 30) requested the appellants to submit the original certificates if their yen deposit claims were to be maintained, and they stated in clear and unambiguous language that if the original certificates were not submitted, the claims would be dismissed on the ground of abandonment and no payment would be made on they by the Office of Alien Property. The letters (J.A. 30), moreover, clearly informed appellants that mailing the original

certificates would not constitute acquiescence in the postwar rate of exchange but that they might file a statement of their objections to the application of the postwar rate of exchange which would be considered by the Director of the Office of Alien Property. As stated above, reference was made in the letter to the 60-day review limitation.

Appellants had absolutely no reason for expecting the Government to grant them equal treatment with their fellow claimants in the Abe case. The letters of the Office of Alien Property clearly indicated that appellants' claims would be dismissed if the original certificates were not submitted. The Government never in any way represented that it would treat the dismissed claims in the same way as was treated claims of those who had submitted the original certificates and whose claims appeared on The Yokohama Specie Bank Ltd. Final Schedule as allowed at the postwar rate of exchange.

Likewise, there is no merit to appellants' argument (p. 15 of appellants' brief) that the Government is estopped with respect to the 60-day statute of limitations because appellants are practically identical with the class of plaintiffs in Abe v. Kennedy (Civil Action No. 2529-61) since their claims were dismissed only because they did not comply with "the Government's misleading, insulting, and arbitrary demand in 1958 for surrender of their original yen certificates." There is no legal support for appellants' apparent assumption that, if the Government's actions with respect to appellants' claims were in

any respect "inequitable," the Government is estopped to plead the defense of the statute of limitations. In any event, the Government's demand for the original certificates was not arbitrary but a reasonable administrative requirement to prevent double payment of the certificates by the Office of Alien Property after the debt had been paid in Japan. Because of the number of claims involved and the necessity of printing a Final Schedule of Allowed Claims for the insolvent estate of The Yokohama Specie Bank Ltd., it was not administratively feasible to postpone requiring the submission of the original certificates until the time of actual payment.

C. The Principle of Interstate Commerce Commission v. Humboldt Steamship Company, 224 U.S. 474, Is Inapplicable.

There is no merit to appellants' contention in Okamoto (No. 19283) (Appellants' brief, pp. 6-9) that the complaint should be sustained on the theory that it is brought in mandamus against refusal by the Office of Alien Property to exercise jurisdiction, and, therefore, comes within the scope of such a case as Interstate Commerce Commission v. Humboldt, 224 U.S. 474. In that case, the Supreme Court approved the issuance of a writ of mandamus to compel the Commission to exercise jurisdiction over a rate complaint of a shipping company in Alaska which it had declined to exercise on the ground that Alaska was not a "Territory of the United States" within the scope of Section 1 of the Interstate Commerce Act. But here, the Office

of Alien Property exercised jurisdiction over appellants' claims when it dismissed them on the ground of ineligibility. In dismissing the claims of the alien enemy internees or parolees on the substantive ground of their ineligibility as debt claimants under Section 34(a) of the Act, it was exercising jurisdiction over the claims, and not declining jurisdiction within the scope of the Humboldt case.

In any event, the remedy of mandamus when jurisdiction has not been exercised, is available under Humboldt only where there is no other remedy. Thus, in Louisville Cement Co. v. Interstate Commerce Commission, 246 U.S. 638, 643, cited by appellants, in applying the rule of the Humboldt case to the refusal of the Interstate Commerce Commission to exercise jurisdiction over a petition because it was barred by a statute of limitation, the Supreme Court stated that "the courts may correct such error on a petition for mandamus where, as in this case, the erroneous decision cannot be reviewed on appeal or writ of error."

Here the dismissals could have been reviewed under Section 34(f) of the Act, the exclusive remedy available to appellants. Thus, a complaint for review was timely brought by Masami Sasaki, whose yen deposit claim against The Sumitomo Bank Ltd. had been dismissed for ineligibility because of his internment under the Alien Enemy Act. This complaint was dismissed on the merits in the District Court. Sasaki v. Rogers, 185 F. Supp. 191. Appellants' contentions with respect to the

alleged unconstitutionality of the eligibility provisions of Section 34(a) of the Act could have been presented in a timely filed complaint for review.

D. The District Court's Dismissal of the Complaints Does Not Present a Constitutional Question.

There is no merit to appellants' contentions (pp. 25-26 of Honda brief and pp. 9-10 of Okamoto brief) that the District Court's dismissal of the complaints as barred by the 60-day limitation of Section 34(f) of the Act raises a constitutional question under the Fifth Amendment of the Constitution. The Amendment that "no person shall be * * * deprived of * * * property, without due process of law; nor shall private property be taken for public use, without just compensation." Appellants do not come within these constitutional provisions since none of their property has been taken by the Government, but only the property of their debtor, The Yokohama Specie Bank Ltd. As bank depositors, the appellants were creditors of the bank but were not owners of any part of the bank's assets. The debts of the banks to appellants have not been seized but are presently owned by the appellants; and as the last sentence of Section 34 implicitly recognizes, these debts are still owed to plaintiffs by the bank in Japan. Moreover, an American creditor has no constitutional right to collect from vested enemy assets a debt owed to him by an enemy. Section 34 was enacted by the Congress as a matter of grace.

Central Union Trust Co. v. Garvan, 254 U.S. 554, does not aid appellants. In that case, the Supreme Court ruled that Congress has power to provide for immediate seizure in war times of property supposed to belong to an enemy "if adequate provision is made for a return in case of mistake" (254 U.S. at 566). This statement relates to the return of vested property to former owners and has nothing to do with the debt claims of creditors. Moreover, there is nothing in the Central Union Trust Co. case to indicate that barring of estoppel with respect to the statute of limitations would be considered incompatible with "adequate provisions - - for a return."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the orders of the District Court should be affirmed.

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A P P E N D I X

Section 34 of the Trading with the Enemy Act, 60 Stat. 925, 50 U.S.C. App. 34.

Sec. 34(a). Any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, shall be equitably applied by the Custodian in accordance with the provisions of this section to the payment of debts owed by the person who owned such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian. * * * Debt claims allowable hereunder shall include only those of citizens of the United States or of the Philippine Islands; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia or the Philippine Islands; those of other natural persons who are and have been since the beginning of the war residents of the United States and who have not during the war been interned or paroled pursuant to the Alien Enemy Act; * * *

Sec. 34(b). The Custodian shall fix a date or dates after which the filing of debt claims in respect of any or all debtors shall be barred, and may extend the time so fixed, and shall give at least sixty days' notice thereof by publication in the Federal Register. * * *

Section 34(e). If the aggregate of debt claims filed as prescribed does not exceed the money from which, in accordance

with subsection (d) hereof, payment may be made, the Custodian shall pay each claim to the extent allowed, and shall serve by registered mail, on each claimant whose claims is disallowed in whole or in part, a notice of such disallowance. Within sixty days after the date of mailing of the Custodian's determination, any debt claimant whose claim has been disallowed in whole or in part may file in the District Court of the United States for the District of Columbia a complaint for review of such disallowance naming the Custodian as defendant. Such complaint shall be served on the Custodian. The Custodian, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to the claim in question. Upon good cause shown such time may be extended by the court. Such record shall include the claim as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, and the determination of the Custodian with respect thereto, including any findings made by him. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian, or could not reasonably have been adduced before him or was not available to him. The court shall enter judgment affirming, modifying, or reversing the Custodian's determination, and directing payment in the amount, if any, which it finds due.

Section 34(f). If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule, the Custodian shall assign priorities in accordance with the provisions of subsection (g) hereof. Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Custodian as defendant. A copy of such complaint shall be served upon the Custodian and on each claimant named in the schedule. The Custodian, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, any findings or other determinations made by the Custodian with respect thereto, and the schedule prepared by the Custodian. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the

Custodian or could not reasonably have been adduced before him or was not available to him. Any interested debt claimant who has filed a claim with the Custodian pursuant to this section, upon timely application to the court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying the schedule as prepared by the Custodian and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of the money from which, in accordance with subsection (d) hereof, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review.

Sec. 34(i). The sole relief and remedy available to any person seeking satisfaction of a debt claim out of any property or interest which shall have been vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the proceeds thereof, shall be the relief and remedy provided in this section, and suits for the satisfaction of debt claims, shall not be instituted, prosecuted, or further maintained except in conformity with this section: * * *

REPLY BRIEF FOR APPELLANTS

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 19,281

AYAKO HONDA, ET AL., *Appellants*,

v.

NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL OF THE UNITED STATES, *Appellee*.

No. 19,282

MASAE KONDO, ET AL., *Appellants*,

v.

NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL OF THE UNITED STATES, *Appellee*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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REPLY BRIEF FOR APPELLANTS

In this Court as in the court below the Government urges that the estoppel doctrine of *Glus* cannot be applied in suits against the United States under the Trading with the Enemy Act. But the authorities advanced by the Government do not so hold. Thus the question remains one of first

impression which we submit should be decided by a holding that the Government is subject to the same estoppel and tolling rules in civil litigation under this Act as private litigants under other federal statutes.

1. The Government's first argument (pp. 12-14) is that estoppel would impermissably expand "the conditions of the sovereign's consent to be sued," by enlarging the Congressionally authorized judicial jurisdiction. But this argument begs the central question whether in the absence of express Congressional language the normal estoppel and tolling principles do or do not apply under the Trading with the Enemy Act. If they do, then application of estoppel does *not* infringe the limits of the Congressional consent for suit. Moreover, as pointed out in Appellants' Brief (p. 21) the argument that estoppel of limitations under a statutory cause of action would expand the Congressionally authorized jurisdiction was examined and rejected by the Supreme Court in *Glus* itself. Therein, the Court disapproved earlier authorities which had seemed to preclude estoppel against the limitations periods of statutory causes of action. Particularly because a serious constitutional issue would otherwise arise (see Appellants' Brief, p. 25), like the statutes involved in *Glus* and in *United States* v. *Price-McNemar Construction Co.*, 320 F. 2d 663, this Act should be deemed amenable to estoppel against limitations.

2. The Government next contends (pp. 14-15) that under such decisions as *Utah Power and Light Co.* v. *United States*, 243 U.S. 389, this limitations period "cannot be extended by estoppel." But *Utah Power and Light* (as well as *Federal Crop Ins. Corp.* v. *Merrill*, 332 U.S. 380 and *Munro* v. *United States*, 303 U.S. 36) only establishes, as the Government itself puts it (p. 15), that the United States is not estopped "by the acts of its officers and agents who, without authority, enter into agreements to do what the law does not sanction

or permit." That rule simply declines to apply promissory estoppel (as distinguished from the equitable estoppel here involved) to hold the United States substantively liable on representations of its agents in excess of their authority. In the present setting, however, no question of excess of authority, promise by an agent, or violation of statutory prohibitions, is involved. Here the only issue is whether the Government may affirmatively plead a limitations period unfairly and inequitably—in view of its own conduct—in bar of a statutory cause of action. As urged above, the applicability of estoppel here, far from conflicting with any substantive Congressional prohibition, should be deemed to accord with a Congressional intent to subject civil suits under the Act to normal equity and tolling principles.

3. The Government also contends (pp. 15 *et seq.*) that certain judicial authorities preclude estoppel of the limitations period of the Trading with the Enemy Act. But *Pittman* v. *United States*, 341 F. 2d 739, presented (as the Government itself concedes at p. 19 of its Brief), a fact situation upon which no estoppel could reasonably have been applied. At best the case involved an unauthorized and mistaken representation falling within the *Utah Power and Light* doctrine discussed above.

In *Soriano* v. *United States*, 352 U.S. 270, a general plea for suspension of limitations because of a state of war was rejected by the Supreme Court as implying too broad an extension of limitations under a great number of federal statutes. Particularly in view of the fact that Congress had in certain instances specifically "seen fit to toll such statutes of limitations because of war," the Court was reluctant to adopt a tolling which it found in any event insufficient to save the plaintiff's action. No estoppel contention was presented or adjudicated.

Finally, this Court's footnote in *Legerlotz* (266 F. 2d at

459) cannot be read as broadly as the Government would read it. That case involved a claim of equitable exemption from limitations which this Court dismissed as "frivolous" on the facts. Moreover, the claim there asserted was in the nature of promissory reliance rather than equitable estoppel and thus subject to the doctrine of *Utah Power and Light*. In any event, the footnote dictum in *Legerlotz* could not stand against such express previous rulings of this Court as *Vestal* v. *Commissioner*, 80 App. D.C. 264, 152 F. 2d 132, 136, holding that "estoppel must be applied with great caution to the Government and its officials. But in proper circumstances it does apply." And this Court's recent decision in *Philips'* (see Brief for Appellants, pp. 22-23) expressly declined to apply the normal six year statute of limitations in a suit against the United States in view of the balance of equities involved in plaintiff's reasonable delay and the Government's partial responsibility for that delay.

4. We respectfully urge the Court's careful examination of a Supreme Court decision issued since this appeal was filed. In *Burnett* v. *New York Central R. Co.*, 380 U.S. 424, the Court ruled that the limitations period of FELA is tolled by a timely state court action later dismissed for improper venue. The decision is notable for its rejection of a technical approach to the tolling of statutory limitations. Citing *Glus* and other authorities, the Court states that "the basic inquiry is whether congressional purpose is effectuated by tolling the statute of limitations in given circumstances," and analyzes the balance of the equities involved in the following terms (pp. 427-428):

> "In order to determine congressional intent, we must examine the purposes and policies underlying the limitation provision, the Act itself, and the remedial scheme

developed for the enforcement of the rights given by the Act. Such an examination leads us to conclude that it effectuates the basic congressional purposes in enacting this humane and remedial Act, as well as those policies embodied in the Act's limitation provision, to hold that when a plaintiff begins a timely FELA action in a state court of competent jurisdiction, service of process is made upon the opposing party, and the state court action is later dismissed because of improper venue, the FELA limitation is tolled during the pendence of the state action.

"Statutes of limitations are primarily designed to assure fairness to defendants. Such statutes 'promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them.' *Order of Railroad Telegraphers* v. *Railway Express Agency, Inc.*, 321 U.S. 342, 348-349. Moreover, the courts ought to be relieved of the burden of trying stale claims when a plaintiff has slept on his rights.

"*This policy of repose, designed to protect defendants, is frequently outweighed, however, where the interests of justice require vindication of the plaintiff's rights . . .*" (emphasis supplied).

The Court concludes by adopting a tolling rule for FELA suits timely brought in an improper venue, because "the humanitarian purpose of the FELA makes clear that Congress would not wish a plaintiff deprived of his rights

when no policy underlying a statute of limitations is served in doing so."

While the statute and setting of *Burnett* are factually distinguishable from the instant case, we submit that the humanitarian and equitable approach of *Burnett*, as well as the previous decision in *Glus* and this Court's decision in *Philips'*, should provide the predicate for the decision in the present case. The present inquiry is thus not a technical exercise in such immutables as "sovereign immunity" and "jurisdiction;" rather, as the Supreme Court emphasized in *Burnett*, "the basic inquiry is whether Congressional purpose is effectuated by tolling the statute of limitations in given circumstances." Accordingly, this Court cannot accept the Government's thesis that no matter how strongly considerations of equity and fairness call for a tolling or estoppel of the 60-day limitations of the Act in a particular case, federal courts lack jurisdiction to adjudicate the merits. We submit that this Court should recognize and uphold the jurisdiction of the District Court to entertain these suits and order them restored to the docket.

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NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL OF THE UNITED STATES, *Appellee*.

PETITION FOR REHEARING IN BANC

This case centers upon the significant question whether the doctrine of equitable estoppel is available against the Federal Government in civil litigation. The majority ruling herein (p. 10) that "*estoppel cannot be used against the Federal Government,*" relies upon the earlier footnote dic-

tum to that effect in *Legerlotz* v. *Rogers*, 105 U.S. App. D.C. 256, 266 F. 2d 457, 459; but that view is hopelessly in conflict with the ruling of this Court in *Vestal* v. *Commissioner*, 80 U.S. App. D.C. 264, 152 F. 2d 132, 136: "... *estoppel must be applied with great caution to the Government and its officials. But in proper circumstances it does apply.*" And estoppel *was* in fact invoked by this Court against the Government in *Vestal* and in *Stockstrom* v. *Commissioner*, 88 U.S. App. D.C. 286, 190 F. 2d 283, and more recently in *N.V. Phillips'* v. *A.E.C.*, 114 U.S. App. D.C. 400, 316 F. 2d 401, where the Government was barred from pleading the normal statutory limitations period in circumstances much like those in the present case. See also authorities cited in the dissenting opinion herein, pp. 24-25.

Whether or not equitable estoppel is available against the Government is a question of first ranking importance, affecting litigation under a wide variety of federal statutes. In the present posture of directly conflicting decisions by panels of this Court, the answer to that question is left in hopeless confusion in the circuit with the largest preponderance of litigation against federal agencies.

Accordingly, it is submitted that the full Court's review is warranted on an important federal issue which the majority herein resolves in conflict with this Court's rulings in *Vestal, Stockstrom,* and *N.V. Phillips'*. And such review is particularly appropriate in a case wherein even the majority opinion concedes (p. 15) that "The unique and unfortunate circumstances which have deprived these appellants of their deposits in the Yokohama Specie Bank command sympathetic consideration of their problem."

Respectfully submitted,

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I certify that this petition is presented in good faith and not for delay.

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